

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-2551  
74-2552  
74-2553

*Signed*  
**74-2551** *P/S*

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

VIVIEN KELLEMS,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

---

ON APPEAL FROM THE DECISIONS OF THE UNITED STATES TAX COURT

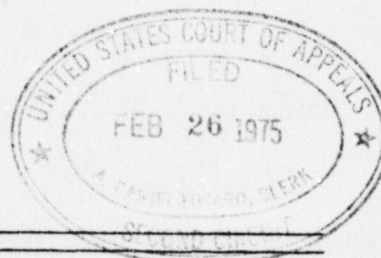
---

APPENDIX

---

SCOTT P. CRAMPTON,  
Assistant Attorney General,

GILBERT E. ANDREWS,  
GARY R. ALLEN,  
ROBERT A. BERNSTEIN,  
Attorneys,  
Tax Division,  
Department of Justice,  
Washington, D.C. 20530.



PAGINATION AS IN ORIGINAL COPY



# TABLE OF CONTENTS

	Page
Docket Entries (No. 3789-71) -----	1
Docket Entries (No. 8862-72) -----	5
Docket Entries (No. 6033-73) -----	9
Memorandum in Opposition to Respondent's "Motion For Further and Better Statement in Petition or to Strike and to Strike in Part" -----	13
Hearing held March 7, 1973 -----	14
Motion, filed November 12, 1973 (No. 3789-71) ----	15
Motion, filed November 12, 1973 (No. 8862-72) ----	16
Motion, filed November 12, 1973 (No. 6033-73) ----	17
Exhibit A, Second Supplemental Stipulation of Facts-----	18
Letter, dated April 22, 1974 -----	23
Order, filed May 1, 1974 -----	24
Hearing held June 5, 1974 -----	25
Order, filed June 19, 1974 -----	31
Joint Motion to Calendar for Trial at Special Trial Session -----	34
Hearing held July 25, 1974 -----	36
Stipulation of Facts -----	90
First Supplemental Stipulation of Facts -----	96
Memorandum Sur Order -----	98
Order of Dismissal and Decision (No. 3789-71)-----	100
Order of Dismissal and Decision (No. 8862-72)-----	102
Order of Dismissal and Decision (No. 6033-73)-----	104
Motion to (1) Vacate Decision, (2) Reconsider Order of Dismissal, and (3) Grant Hearing on Merits (No. 3789-71) -----	106
Motion to (1) Vacate Decision, (2) Reconsider Order of Dismissal, and (3) Grant Hearing on Merits (No. 8862-72) -----	108
Motion to (1) Vacate Decision, (2) Reconsider Order of Dismissal, and (3) Grant Hearing on Merits (No. 6033-73) -----	110
Joint Motion to Correct Transcript -----	112

# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. **3789-71**

VIVIEN KELLEMS

Newberry Road

East Haddam, Connecticut

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

### APPEARANCES FOR PETITIONER:

~~David R. Shelton, Munsey Building,~~  
Washington, D.C. (W/D 11/12/73)

NAME

ADDRESS

Date Month Day Year		Filings and Proceedings	Action	Served
June 7, 1971		PETITION FILED: FEE PAID	June 7, 1971	June 9, 1971
June 7, 1971		REQUEST by Petr. for trial at Washington, D.C. filed	GRANTED June 9, 1971	June 9, 1971
Jul 22, 1971		ANSWER filed by Resp		Jul 23, 1971
Nov. 12, 1973		MOTION by David R. Shelton to withdraw as counsel of record. (Consent by Petr.)	GRANTED Nov. 12, 1973	NOV 13 1973
Feb. 25, 1974		NOTICE Of Trial on June 3, 1974 at Washington, B.C.		Feb. 25, 1974
April 11, 1974		MOTION by Resp. to consolidate #3789-71, #8862-72, & #6033-73 for Trial, Briefing and Opinion. (No Obj. Petr.)	GRANTED April 12, 1974	APR 15 1974
Apr. 12, 1974		MOTION by Resp. for order to show cause why proposed facts and evidence should not be accepted as established. (Proposed Second Supplemental Stipulation of Facts Attached) (C/S 4/12/74)	See Order Apr. 15, 1974	
Apr. 15, 1974		ORDER, that resp's motion is granted and further ORDER, that petr shall, on or before May 20, 1974 file a response to this order, and show cause on May 29, 1974 at Wash, D.C.		APR 17 1974
April 25, 1974		PETR'S RESPONSE to Court's order dated April 15, 1974. (continued to page 2)		MAY 3 1974



(Continuation)

VIVIEN KELLEMS			PETITIONER	PAGE 2
Date			Action	Served
Month	Day	Year		
May 1, 1974	ORDER, that the proposed (Second Supplemental Stipulation of Facts) with att. exhs., and exh. A attached to respondent's motion filed April 12, 1974 are accepted as established for the purpose of these cases. It is further ORDERED, that petitioner show cause on June 3, 1974, at Washington, D.C. and it is further ORDERED, that these cases are stricken from the calendar at Washington, D.C. on May 29, 1974.			MAY 3 1974
June 3, 5, 1974	HEARING at Washington, D.C. before Judge Raum. Case continued for trial in due course, see order dated June 19, 1974.			
June 7, 1974	TRANSCRIPT of June 5, 1974 received.			
June 19, 1974	ORDER that this case is restored to the general docket for trial in due course.			JUN 26 1974
June 25, 1974	ORDER that a hearing under the Court's order dated May 1, 1974 is continued to a date and time to be set by further order.			JUN 26 1974
June 26, 1974	JOINT MOTION to calendar cases for trial at Special Trial Session in Washington, D.C. during July 8, 1974 and July 26, 1974.		See Order July 3, 1974	
July 3, 1974	ORDER that said motion/is granted and case is calendared for trial on July 25, 1974 at Washington, D.C.; further ORDER that pursuant to the Court's order dated June 25, 1974 case is also calendared at the above-stated time and place for hearing on the Court's order dated May 1, 1974.			JUL 5 1974

(continued to page 3)

# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 3789-71

(Continuation)

VIVIEN KELLEMS

Date		Filings and Proceedings	PETITIONER	
Month	Day Year		Action	Served
July 25, 1974		TRIAL at Washington, D.C. before Judge Wiles.		
		Hearing held on the Court's order to show cause dated		
		May 1, 1974 (See Order dated July 25, 1974).		
		Respondent's oral motion to dismiss for failure to		
		properly prosecute - Granted.		
		Petr's oral motion for Jury Trial. (Memo Sur Order to be Written)		
		Stipulation of facts with attached exhibits 1A-7G filed.		
		First Supplemental Stipulation of facts filed.		
July 30, 1974		Transcript of July 25, 1974 received.		
July 25, 1974		ORDER, That paragraph 39 of the "Second Supplemental		AUG 7 1974
		Stipulation of Facts" is accepted as established for		
		the purposes of these cases.		
August 5, 1974		MEMORANDUM SUR ORDER, That petitioner's oral motion		AUG 7 1974
		requesting a Jury Trial is denied.		
August 7, 1974		ORDER, that Respondent's oral motion is granted and		AUG 7 1974
		that this case is dismissed for failure to properly		
		prosecute.		
		ORDER OF DISMISSAL AND DECISION ENTERED, Judge Wiles.		
Sept. 4, 1974		MOTION by Petr. to vacate decision, reconsider order of	DENIED	
		dismissal and grant hearing on merits.	Sept. 9, 1974	SEP 10 1974
Sept. 11, 1974		JOINT MOTION to correct transcript.	GRANTED	
			Sept. 16, 1974	SEP 16 1974
		APPELLATE PROCEEDINGS		
Oct. 29, 1974		NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petr.		Oct. 30, 1974
Oct. 30, 1974		NOTICE of Filing with copy of notice of appeal sent to		

(continued on page 4)



(Continuation)

[illegible]



# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 8862-72

VIVIEN KELLEMS

Newberry Road  
East Haddam, Conn. 06423

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

NAME ~~David R. Shelton, Munsey Building,~~  
~~Washington, D.C.~~ (W/D 11/12/73)

ADDRESS \_\_\_\_\_

Date Month Day Year			Filings and Proceedings	Action	Served
Dec. 1, 1972			PETITION FILED: FEE PAID Dec. 1, 1972		Dec. 5, 1972
Dec. 1, 1972			REQUEST by petr. for trial at Washington, D.C.	GRANTED Dec. 5, 1972	Dec. 5, 1972
Jan. 18, 1973			MOTION by Resp. for further and better statement in Petition or to strike and to strike in Part.	DENIED Mar. 7, 1973	MAR 12 1973
Jan. 23, 1973			NOTICE of filing of Resp. motion <sup>filed</sup> / Jan. 18, 1973 and hearing on March 7, 1973. ( Amended pleading due Feb. 20, 1973 )		Jan. 23, 1973
Feb. 5, 1973			MEMORANDUM by Petr. in opposition to resp. motion filed.		FEB 7 1973
Mar. 7, 1973			HEARING at Washington, D.C. before Judge Dremmen. Respondent's motion filed Jan. 18, 1973 is denied.		
Mar. 12, 1973			TRANSCRIPT of Mar. 7, 1973 rec'd.		
May 2, 1973			ANSWER by Resp. filed.		May 3, 1973
Nov. 12, 1973			MOTION by David R. Shelton to withdraw as counsel of record. (Consent by Petr.)	GRANTED Nov. 12, 1973	NOV 13 1973
Feb. 25, 1974			NOTICE for Trial on June 3, 1974 at Washington, D.C.		Feb. 25, 1974
April 11, 1974			MOTION by Resp. to consolidate #3789-71, #8862-72, & #6033-13 for Trial, Briefing and Opinion. (No Obj. Petr.)	GRANTED April 12, 1974	APR 15 1974
Apr. 12, 1974			MOTION by Resp. for order to show cause why proposed facts and evidence should not be accepted as established. (Second Supplemental Stipulation of Facts Attached) (C/S 4/12/74)	See Order Apr. 15, 1974	

continued on page 2

Form No. 24  
May 1970

DOCKET NO. 8862-72

(Continuation)

			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
Apr. 15, 1974	ORDER, that resp's motion is granted and further			APR 17 1974
	ORDER, that petr shall, on or before May 20,			
	1974 file a response to this order, and			
	show cause on May 29, 1974 at Wash. D.C.			
April 25, 1974	PETR'S RESPONSE to Court's order dated April 15, 1974.			MAY 3 1974
May 1, 1974	ORDER, that the proposes (Second Supplemental Stip-			MAY 3 1974
	ulation of Facts) with att. exhs., and exh. A attached			
	to respondent's motion filed April 12, 1974 are acc-			
	epted as established for the purpose of these casss.			
	It is further			
	ORDERED, that petitioner show cause on June 3, 1974,			
	at Washington, D.C. and it is further			
	ORDERED, that these cases are stricken from the cal-			
	endar at Washington, D.C. on May 29, 1974.			
June 3, 5, 1974	HEARING at Washington, D.C. before Judge Raum.			
	Case continued for trial in due course, see order			
	dated June 19, 1974.			
June 7, 1974	TRANSCRIPT of June 5, 1974 received.			
June 19, 1974	ORDER that this case is restored to the general docket			JUN 26 1974
	for trial in due course.			
June 25, 1974	ORDER that a hearing under the Court's order dated May			JUN 26 1974
	1, 1974 is continued to a date and time to be set by			
	further order.			
June 26, 1974	JOINT MOTION to calendar cases for trial at Special	See Order		
	Trial Session in Washington, D.C. during July 8, 1974	July 3, 1974		
	and July 26, 1974.			
	(continued to page 3)			



# UNITED STATES TAX COURT

## GENERAL DOCKET

DOCKET NO. 8862-72

(Continuation)

VIVIEN KELLEMS		PETITIONER	PAGE 3
Date	Filings and Proceedings	Action	Served
Month Day Year			
July 3, 1974	ORDER that said motion to calendar case for trial is granted		JUL 5 1974
	and case is calendared for trial on July 25, 1974 at		
	Washington, D.C.; further		
	ORDER that pursuant to the Court's order dated June 25,		
	1974 case is also calendared at the above-stated		
	time and place for hearing on the Court's order		
	dated May 1, 1974.		
July 25, 1974	TRIAL at Washington, D.C. before Judge Wiles.		
	HEARING held on the Court's order to show cause dated		
	May 1, 1974 (See Order dated July 25, 1974).		
	Respondent's oral motion to dismiss for failure to		
	properly prosecute- Granted.		
	Petr's oral motion for Jury Trial. (Memo Sur Order to be Written)		
	Stipulation of facts with attached exhibits 1A-7G filed.		
	First Supplemental Stipulation of facts filed.		
July 30, 1974	TRANSCRIPT of July 25, 1974 received.		
July 25, 1974	ORDER, that paragraph 39 of the "Second Supplemental		AUG 7 1974
	Stipulation of Facts is accepted as established for		
	the purposes of these cases.		
August 5, 1974	MEMORANDUM SUR ORDER, That petitioner's oral motion		AUG 7 1974
	requesting a Jury Trial is denied.		
August 7, 1974	ORDER, that Respondent's oral motion is granted and that		AUG 7 1974
	this case is dismissed for failure to properly		
	prosecute. ORDER OF DISMISSAL AND DECISION ENTERED, Judge Wiles.		

(Continuation)

GPO : 1973-O-486-979



[Caption omitted]

[Filed February 5, 1973]

MEMORANDUM IN OPPOSITION TO RESPONDENT'S  
"MOTION FOR FURTHER AND BETTER STATEMENT  
IN PETITION OR TO STRIKE AND TO STRIKE  
IN PART"

Respondent's motion is frivolous and should be denied  
for reasons as follows:

\* \* \* \* \*

Harassment, Presumption of Correctness  
and Burden of Proof

\* \* \* \* \*

[-5-]

9. There could be no better proof of harassment than  
the instant motion itself. Respondent knows full well that  
once the litigation now pending in the Second Circuit for  
argument in April is concluded, it is expected that all of  
Miss Kellems' cases, including the instant case, will be  
settled without further litigation. Under such circumstances,  
why was the instant frivolous motion filed against a pleading  
that has been repeatedly approved by respondent?

\* \* \* \* \*

/s/ David R. Shelton  
DAVID R. SHELTON  
Munsey Building  
Washington, D.C. 20004  
  
Counsel for Petitioner

[Caption omitted]

\* \* \* \* \*

LOCATION OF HEARING;

UNITED STATES TAX COURT  
WASHINGTON, D.C.

DATE:

March 7, 1973

BEFORE:

THE HONORABLE WILLIAM M. DRENNEN

APPEARANCES:

DAVID SHELTON

for the petitioner

F. PATRICK MATTHEWS

for the respondent

\* \* \* \* \*

[ 5 ]

\* \* \* \* \*

THE COURT: Well, I agree, but now, let's limit ourselves to these -- the errors claimed. I don't believe that there is any claimed error -- any error claimed in the petition as to the amount of the gross income that has been determined by the respondent.

MR. MATTHEWS: No, there is not.

THE COURT: Is that correct, Mr. Shelton?

MR. SHELTON: That's correct.

THE COURT: Inso far as the petitioner is concerned, but you do contest the amount of the deductions that have been allowed?

MR. SHELTON: Just itemized deductions, that's all, Your Honor.

[6] THE COURT: And these are -- and that's the only error claimed with regard to computation of the tax, per se?

MR. SHELTON: That's correct.

\* \* \* \* \*



UNITED STATES TAX COURT

UNITED STATES  
TAX COURT

F NOV 12 1973

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 3789-71

MOTION

Now comes petitioner, Vivien Kellems, by her counsel, David R. Shelton, and respectfully requests that said David R. Shelton be permitted to withdraw as counsel in the above-entitled proceeding. Notice of counsel's withdrawal has been given to petitioner.

*David R. Shelton*

David R. Shelton  
Munsey Building  
Washington, D.C.  
Counsel for Petitioner

I ask that this motion be granted.

18 *Vivien Kellems*  
Vivien Kellems

U. S. TAX COURT  
GRANTED

NOV 12 1973

(Signed) H. A. Dawson, Jr.

JUDGE

UNITED STATES TAX COURT

UNITED STATES  
TAX COURT

F NOV 12 1973 D

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 8852-72

MOTION

Now comes petitioner, Vivien Kellems, by her counsel, David R. Shelton, and respectfully requests that said David R. Shelton be permitted to withdraw as counsel in the above-entitled proceeding. Notice of Counsel's withdrawal has been given to petitioner.

*David R. Shelton*

David R. Shelton  
Munsey Building  
Washington, D.C.  
Counsel for Petitioner

I ask that this motion be granted.

*W/ Vivien Kellems*  
Vivien Kellems

U. S. TAX COURT  
GRANTED

NOV 12 1973

(Signed) H. A. Dawson, Jr.

JUDGE



UNITED STATES TAX COURT

UNITED STATES  
TAX COURT

F NOV 12 1973

VIVIEN KELLEMS,

Petitioner,

v.

Docket No. 6033-73

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

MOTION

Now comes petitioner, Vivien Kellems, by her counsel, David R. Shelton, and respectfully requests that said David R. Shelton be permitted to withdraw as counsel in the above-entitled proceeding. Notice of counsel's withdrawal has been given to petitioner.

*David R. Shelton*

David R. Shelton  
Munsey Building  
Washington, D.C.  
Counsel for Petitioner

I ask that this motion be granted.

*/s/ Vivien Kellems*  
Vivien Kellems

U. S. TAX COURT  
GRANTED

NOV 12 1973

(Signed) H. A. Dawson, Jr.

JUDGE

- 18 -

UNITED STATES TAX COURT

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

Docket Nos. 3789-71,  
8862-72, 6033-73

[Filed April 12, 1974]

SECOND SUPPLEMENTAL  
STIPULATION OF FACTS

It is hereby further stipulated that, for purposes of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this Stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts or exhibits in evidence on grounds of materiality and relevancy; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated, and either party may specifically reserve any other objection by noting the same in the body of this stipulation

20. For the taxable and calendar years 1968, 1969 and 1970, petitioner had a savings account at the Montpelier National Bank, Montpelier, Vermont.



21. Attached hereto as Exhibits 8-H and 9-I are true and correct copies of letters dated August 5, 1970, and July 11, 1972, respectively, from the Montpelier National Bank to Internal Revenue Agent Ralph E. Skau.

22. For the years 1968, 1969 and 1970, petitioner's savings account at the Montpelier National Bank earned interest in the following amounts:

1968	\$82.93
1969	\$61.00
1970	\$17.01

23. For the taxable year 1968, 1969, 1970 and 1971, respectively, petitioner received copies of the Forms 1099 attached hereto as Exhibits 10-J, 11-K, 12-L and 13-M from Harvey Hubbell, Incorporated, The Kellems Division, which Forms name petitioner as payee of the following amounts under the category of "Commissions, fees, prizes and awards, etc., to nonemployees and foreign items. (No Form W-2 item)

1968	\$15,000.00
1969	\$15,000.00
1970	\$15,000.00
1971	\$15,000.00

24. Attached hereto as Exhibits 14-N and 15-O are true and correct copies of letters dated July 13, 1970, and January 2, 1973, respectively, from Harvey Hubbell, Incorporated, to the Internal Revenue Service marked for the attention of Revenue Agent Ralph E. Skau.

[- 3 -]

25. Petitioner received the sum of \$15,000.00 from Harvey Hubbell, Incorporated as "consulting fees" during each of the years 1968 through 1971, inclusive.

26 For the taxable years 1968, 1969, 1970 and 1971, respectively, petitioner received copies of Forms 1099 from the First National City Bank, New York, New York, which 1099 Forms name petitioner as payee of cash dividends in the following amounts:

1968	\$45,228.60
1969	\$47,161.84
1970	\$49,121.02
1971	\$50,566.00

27. First National City Bank is the dividend disbursing agent for Harvey Hubbell, Incorporated.

28. During the taxable years 1968, 1969, 1970 and 1971, petitioner received cash dividends of \$45,228.60, \$47,161.84, \$49,121.02 and \$50,566.00, respectively, from Harvey Hubbell, Incorporated, through its disbursing agent First National City Bank.

29. For the taxable years 1970 and 1971, petitioner received copies of Forms 1099 or other similar paper records from the following sources naming petitioner payee of the following amounts:

Peter Paul, Inc.	\$360.00
Continental Oil Co.	\$150.00
Interpace Corp.	\$100.00



30. During the taxable years 1970 and 1971, petitioner received dividend income from the following sources and in the following amounts:

Peter Paul, Inc.	\$360.00
Continental Oil Co.	\$150.00
Interpace Corp.	\$100.00

31. During the taxable year 1971, petitioner received farm income from the United States Department of Agriculture in the amount of \$250.00.

32. In 1964, petitioner acquired real property at 4439 Petit Avenue, Encino, California (hereinafter referred to as the "Encino Property").

33. A Close of Escrow Statement (Escrow No. 41-35688) dated November 27, 1964, sets forth a consideration of \$51,500.00 as being paid for the Encino Property and lists the sum of \$93.50 as paid in escrow fee and charges in connection with said property.

34. Petitioner sold the Encino Property in 1966.

35. In 1963, petitioner acquired White Sails Inn, Stonington, Connecticut.

36. Petitioner sold the White Sails Inn property in 1966.

37. Petitioner sold the White Sails Inn property referred to in paragraph 35 above for \$93,750.00.

38. In 1967, petitioner sold a frame house.

39. Petitioner sold the frame house referred to in paragraph 38 above for the sum of \$15,135.50.

MEADE WHITAKER  
Chief Counsel  
Internal Revenue Service

---

VIVIEN KELLEMS  
Petitioner

By: 

---

DONALD W. GEERHART  
Chief, Trial Branch  
Tax Court Litigation Division  
1111 Constitution Ave., N.W.  
Washington, D. C. 20224  
Tel. No. 202-964-3335

---

Date



*Vivien Kellems*

East Haddam, Connecticut 06423 April 22, 1974

UNITED STATES TAX COURT  
WASHINGTON, D C

Attention Judge Howard A. Dawson, Jr.

Your Honor:

This is in reply to your ORDER TO SHOW CAUSE UNDER  
RULE 91 (f) in regard to Dockets No. 3789-71, 8862-  
72, 6033-73.

I have decided to exercise my woman's prerogative to  
change my mind and will stipulate to all requests from  
No. 20 to 36, inclusive, as set forth in EXHIBIT of the  
Internal Revenue Service's SECOND SUPPLEMENTAL STIPULA-  
TION OF FACTS.

I am sending a copy of this letter to the Internal  
Revenue Service.

Respectfully

*Vivien Kellems*



UNITED STATES TAX COURT  
WASHINGTON

VIVIAN KELLEMS

Petitioner.

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 3789-71  
8352-72  
6033-73

[Filed May 1, 1974]

ORDER

The Court received on April 25, 1974, a letter from petitioner which is hereby directed to be filed as of April 25, 1974, as petitioner's response to the Court's order dated April 15, 1974, and upon consideration thereof, it is

ORDERED, That the proposed "Second Supplemental Stipulation of Facts" (Exhibit A attached to respondent's motion filed April 12, 1974) together with joint exhibits numbers 8-H through 15-O attached thereto, except paragraph 39 of said proposed stipulation, are accepted as established for the purpose of these cases. It is further

ORDERED, That petitioner shall show cause at the calendar call for the Trial Session beginning 10:00 a.m., June 3, 1974, at Washington, D.C., why paragraph 39 of said stipulation should not be accepted as established for the purpose of these cases; and it is further

ORDERED, That these cases are stricken from the calendar for the Motions Session at Washington, D.C., on May 29, 1974.

(Signed) Howard A. Dawson, Jr.

Judge

Dated: Washington, D.C.  
May 1, 1974



UNITED STATES TAX COURT

VIVIAN KELLEMS

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE  
Respondent.

Docket No.

3789-71  
8862-72  
6033-73

HEARING AT: WASHINGTON, D C .

DATE: June 5, 1974

PAGES: 1 through 5

NATIONAL REPORTING CO., INC.

408 OLIVE ST.  
ST. LOUIS, MO. 63102  
(314) 421-2335

2009 N. 14th  
ARLINGTON, VA. 22201  
(703) 525-1885

UNITED STATES TAX COURT

VIVIAN KELLEMS

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

DOCKET NO. 3789-71  
8862-72  
6033-73

LOCATION OF HEARING: UNITED STATES TAX COURT  
WASHINGTON, D.C .

DATE: June 5, 1974

BEFORE: THE HONORABLE ARNOLD RAUM

APPEARANCES: AVA D. POE  
for the Respondent



P R O C E E D I N G S

THE CLERK: Docket numbers 3789-71 and 3862-72, and 6033-73, Vivian Kellems, and related Petitioners.

MS. POE: Ava D. Poe for the Respondent, Your Honor.

THE CLERK: Am I to appear on behalf of the Petitioner, Your Honor, Charles S. Cazzaza, the Clerk of the Court. Your Honor --

THE COURT: Mr. Cazzaza, I understand that you have something to report to the Court in this connection?

THE CLERK: That's correct, Your Honor. As the Court knows, this case is presently set for trial tomorrow morning.

On Monday, June 3rd, the Court received a telegram addressed to the Clerk, from a Dr. John Paarenkooper, spelled P-a-a-r-e-n-k-o-o-p-e-r. The telegram reads as follows. Ms. Vivian Kellems is unable to appear because of illness. I received a telephone call from Ms. Kellems this morning. She informed me that she is confined to bed with a heart condition, and would be unable to appear tomorrow morning. She inquires whether or not her case could be set for trial at some later date during its present trial session. She stated that she was anxious to have her case tried. I told her I would

1 speak to you regarding the matter, and that brings us to  
2 this here.

3 MS. POE: Your Honor, the Respondent has spent  
4 a good deal of time, in preparation, including attempts  
5 at getting as full a stipulation as possible in this case.  
6 We are also anxious and ready for trial. Any postponement  
7 at this time is of course inconvenient.

8 Ms. Kellems called me Friday and advised that she  
9 had not mentioned it before, but she had had in her words  
10 many heart attacks when she returned from Scotland in mid-  
11 May of this year, but that she still planned to try to try  
12 her case on Monday.

13 This was the first that the Respondent was advised  
14 of any physical incapacity for trial on the Petitioner's  
15 part, and this is particularly so as the Respondent was  
16 aware that the Petitioner had evidently issued news  
17 releases as late as last week to the effect that her case  
18 would be heard this week.

19 On Sunday morning, I talked with Ms. Kellems, and  
20 she indicated that her doctor had thought it would be  
21 about a month before she would be able to come for trial,  
22 but that she thought that she could make it on Wednesday  
23 or Thursday of this week.

24 The Respondent is concerned over Ms. Kellems'  
25 health, and wishes her speedy recovery, we would appreciate



1 an estimate from her doctor as to when Ms. Kellems will  
2 be able to try this case, if possible the Respondent would  
3 also request that this case be held on this calendar,  
4 and his protective subpoenas continue to be held over  
5 until the trial of the case. And, we would very much hope  
6 that this case is not in need of a general continuance.

7 THE COURT: Well, in view of the fact that it  
8 seems impossible for Ms. Kellems to be here tomorrow, this  
9 case will not go on tomorrow.

10 On the other hand, I will not release the case  
11 from this -- from this calendar. And, if it can be  
12 fitted in, at some convenient point, when the case can  
13 be heard, I will do so.

14 I do have a case set for next week that is going  
15 to, according to estimates, will consume the entire week,  
16 and another case set for the week after that, beginning  
17 on Monday, June the 17th, which may run for at least  
18 several days.

19 I will postpone until Monday, the 17th of  
20 June, the matter of deciding whether the Kellems' case  
21 can be heard upon the conclusion of the case which I  
22 expect to start on Monday the 17th. And, at that time,  
23 if it does appear that the Kellems' case can be heard,  
24 at the conclusion of the other case, namely the Singer  
25 case, I will instruct the clerk to notify Ms. Kellems and

1 Government counsel accordingly.

2 MS. POE: I would only note, Your Honor, that  
3 since plans had been for this case to be heard this week,  
4 that I have a possible commitment that may tie me up for  
5 the week of the 24th of June, that's indeterminate at this  
6 time.

7 THE COURT: Well, I do not expect to be sitting  
8 the week of the 24th of June. This calendar is going to  
9 be completed the week of the 17th. So, the Kellems'  
10 case will either be heard during that week or not at all  
11 on this calendar.

12 MS. POE: Then do I understand that the calendar  
13 would not be carried over until July under any circumstances?

14 THE COURT: No, this calendar is going to be  
15 completed in the week of June 17th.

16 MS. POE: Thank you, Your Honor.

17 THE COURT: That is all, thank you very much.  
18 Off the record.

19 (Whereupon, the hearing in the above was concluded  
20 as described above.)  
21  
22  
23  
24  
25





UNITED STATES TAX COURT  
WASHINGTON

VIVIEN KELLENB

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 3789-71  
8862-72  
6033-73

[Filed June 19, 1974]

ORDER

These cases were calendared for trial at the Trial Session of this Court beginning June 3, 1974 at Washington, D.C. Petitioner communicated with the Clerk of the Court by telephone prior to the call of the calendar on June 3 and informed him she would be unable to appear at the calendar call that morning due to illness. She requested that her cases be set for trial Thursday, June 6, 1974. Accordingly, the cases were set for trial on that date.

On Wednesday, June 5, the petitioner again telephoned the Clerk of the Court and informed him that she was still ill and requested a postponement of the trial of her cases to some later date during this same trial session.

At a hearing on June 5, at which counsel for respondent was present, the Court stated that petitioner's request for a postponement of her trial from June 6 would be granted. The Court stated it would attempt to reschedule her cases for trial during the week of June 17 if possible. Petitioner was advised that one case was scheduled for trial during the entire week of June 10 and that the trial of a second case was scheduled to begin June 17 which the parties estimated would take three days to complete. Petitioner was informed by the Clerk of the Court that he would communicate with her during the early part of the week of June 17 and advise her as to whether her cases could be reached for trial.

On June 18, 1974 the Clerk reached petitioner by telephone and informed her that the trial of the first case, which began



Vivien Kellens  
Docket Nos. 3789-71,  
6862-72 & 6033-73

[ - 2 - ]

June 10, had continued into the week of June 17 and that, inasmuch as the second case would have to be tried during that same week, time would not permit rescheduling of her cases for trial during this trial session.

Accordingly, it is

ORDERED that these cases be restored to the general docket for trial in due course.

(Signed) Arnold Raum

Judge

Dated: Washington, D.C.  
June 19, 1974

UNITED STATES TAX COURT

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

)  
)  
)  
) Docket Nos. 3789-71  
8862-72  
6033-73  
)

) [Filed June 26, 1974]

JOINT MOTION TO CALENDAR FOR TRIAL AT SPECIAL TRIAL SESSION

THE PARTIES MOVE that the Court calendar the above-entitled consolidated cases for trial at a Special Trial Session of the Court and that such Special Trial Session be held in Washington, D.C., anytime during the period of July 8, 1974, through and including July 26, 1974.

IN SUPPORT THEREOF, the parties respectfully show unto the Court:

1. The above-entitled cases were calendared for trial at the Trial Session commencing June 3, 1974, in Washington, D.C. and these cases were then scheduled for trial on June 6, 1974.

2. In view of petitioner's notification to the Court of her physical inability to attend trial of these cases on June 6, 1974, trial of these cases was postponed from June 6,



1974, until the week of June 17, 1974, providing there was time left during that concluding week of the calendar to try these cases.

3. Due to the extended trial of cases previously calendared on the June 3, 1974, calendar, there was insufficient time prior to the conclusion of that calendar for the trial of these cases.

4. The parties are anxious to try these cases and it is estimated that the cases can be tried in a half a day or less of trial time.

5. Washington, D.C., has been designated as the place of trial in the above-entitled cases and the cases are now at issue and ready for trial.

WHEREFORE, it is prayed that this motion be granted.

MEADE WHITAKER  
Chief Counsel  
Internal Revenue Service

Vivien Kellens  
VIVIEN KELLENS  
Petitioner

(Signed) Edward E. Pigg  
By: STE  
EDWARD E. PIGG  
Acting Chief, Trial Branch  
Tax Court Litigation Division  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D. C. 20224  
Tel. No. 202-964-3335

JUN 26 1974

Date

UNITED STATES TAX COURT

Vivian Kellems

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE  
Respondent.

8862-72  
Docket No. 3789-71  
6033-73

HEARING AT WASHINGTON, D. C.

DATE July 25, 1974

PAGES 1 through 52

**NATIONAL REPORTING CO., INC.**

408 OLIVE ST. - ST. LOUIS, MO. 63102 - (314) 421-2335  
2009 N. 14th - ARLINGTON, VA. 22201 - (703) 525-1885



## UNITED STATES TAX COURT

Vivian Kellems  
Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

8862-72  
Docket No. 3789-71  
6033-73

LOCATION OF HEARING: WASHINGTON, D. C.

DATE: July 25, 1974

BEFORE: THE HONORABLE DARRELL D. WILES

APPEARANCES: Ava D. Poe  
/  
for Respondent

P R O C E E D I N G S

THE CLERK: All persons having business before the  
United States Tax Court draw near and give their attention.

The Court is now in session.

God save the United States and this honorable  
Court.

Judge Wiles presiding.

Be seated.

THE COURT: Mr. Clerk, will you call the cases  
before this special session of the Court?

THE CLERK: Yes, Your Honor.

Docket number 3789-71 and two related cases,  
Vivien Kellems.

Please state your appearances.

THE COURT: Will you announce your appearance,  
please?

MRS. KELLEMS: I'm Vivien Kellems, of East  
*Hamden*  
Hampton, Connecticut.

MS. POE: Ava D. Poe, for Respondent, Your Honor.

THE COURT: Thank you.

Mrs, Kellems, you are appearing here pro se,  
without the benefit of counsel?

MRS. KELLEMS: Yes, I'm my own attorney.

THE COURT: I thank you. You may be seated.

We have for consideration this morning two



1 matters. One is an argument on a Court order, dated May 1,  
2 1974, that Petitioner show cause <sup>why</sup> paragraph 39 of the  
3 proposed second supplemental stipulation of facts should  
4 not be accepted as established for the purposes of these  
5 cases. And we're going to take up that motion first.  
6 And then, secondly, after the completion of that motion, we  
7 will then have the trial of the case.

8 As respect to the motion, under Rule 91f, before  
9 the Court, I would like to read into the record a little  
10 background.

11 The Respondent, on April 12, 1974, filed with  
12 this Court a motion for order to show cause why proposed  
13 facts in evidence should not be accepted as established.  
14 And <sup>attached</sup> ~~the tax~~ of that motion was a second supplemental  
15 stipulation of facts, the paragraphs of which ran from  
16 paragraph number 20 through paragraph number 39, and the  
17 motion was set down to be heard by this Court, but prior to  
18 a hearing thereon, Miss Keller<sup>s</sup> advised the Court that she  
19 would stipulate to all requests from paragraph number  
20 20 to 38, exclusive. And in accord therewith, the Chief  
21 Judge of this Court entered an order, on May 1, 1974,  
22 whereby he ordered that the proposed second supplemental  
23 stipulation of facts and the pertinent exhibits attached  
24 thereto, except paragraph 39 of said proposed stipulation,  
25 are accepted as established for the purposes of these cases

1 Then when this case was set down today at this  
2 special session of the Court for trial, it was also ordered  
3 that we hear arguments on this paragraph 39. And at that  
4 time -- this time, I do want to hear arguments as respect  
5 39, paragraph 39 in the second stipulation of facts.

6 For the record, I would like to indicate that  
7 paragraph 38, to which Miss Kellems has agreed, states, in  
8 1967, Petitioner sold a frame house. Now, the last  
9 paragraph of 39; to which she did not agree and which I  
10 want to consider at the moment, reads, as follows:

11 "Petitioner sold the frame house referred to in paragraph  
12 38 above for the sum of 15,135 -- \$135.50."

13 Well, Miss Kellems, the Court would like to hear  
14 at this time from you with respect why you did not agree  
15 to paragraph 39 and what is your position on that matter?

16 MISS KELLEMS Your Honor, before making any  
17 statement about paragraph 39, I wish to make a request --

18 THE COURT: Yes, ma'am.

19 MISS KELLEMS -- and a preliminary statement.  
20 Is that all right?

21 THE COURT: Yes, you may.

22 MISS KELLEMS Yes. Thank you.

23 THE COURT: If it gets -- now, don't get into the  
24 trial itself, in the issues of the trial itself. I --

25 MISS KELLEMS No.



1 THE COURT: You'll have a chance to make an  
2 opening statement later.

3 MISS KELLEMEYER: Well, I wish to make --

4 THE COURT: I'd like to direct yourself to  
5 paragraph 39.

6 MISS KELLEMEYER: Well, I'm sorry, I'm not prepared  
7 to do so because what I have to say is really before I make  
8 any statement.

9 THE COURT: All right. Proceed with your  
10 statement.

11 MISS KELLEMEYER: Yes.

12 Before proceeding with this trial, I wish to make  
13 a request and read a short statement.

14 My request is simple.

15 Under my constitutional rights guaranteed by the  
16 Seventh Amendment, I ask for a jury trial. The Seventh  
17 Amendment reads as follows: "In suits at common law -- if  
18 you don't mind, I think I will sit down.

19 THE COURT: You may be seated.

20 MISS KELLEMEYER: "In suits at common law, where the  
21 value in controversy shall exceed twenty dollars, the right  
22 of trial by jury shall be preserved, and no fact tried by  
23 a jury, shall be otherwise re-examined in any Court of the  
24 United States, than according to the rules of the common  
25 law."

1 This is a suit at common law and the amount at  
2 controversy exceeds twenty dollars. The amount the  
3 Government claims I owe is \$119,081.24. The amount the  
4 Government owes me is much more than that.

5 Other American citizens may have asked this  
6 Court for a jury trial. I know of only one such case,  
7 that of Mr. and Mrs. Philip Long, of Bellevue, Washington.  
8 Acting as their own attorneys, as am I, they requested a  
9 jury trial and were refused. They may have accepted the  
10 refusal of the Court. I shall not do so. If you deny me a  
11 jury trial, I shall appeal the decision to the Court of  
12 Appeals, and, if necessary, to the Supreme Court.

13 My position is different in one request from that  
14 of Mr. and Mrs. Long. I have had a jury trial in a case  
15 analogous to this one, and I stand upon the precedent  
16 established by that case.

17 On May 23rd, 1948, agents of the Internal Revenue,  
18 under order of the Acting Collector of Internal Revenue  
19 for the District of Connecticut, walked into the Westport  
20 Bank and Trust Company, in Westport, Connecticut, and  
21 seized \$1685.40 from my bank account. On August 8, 1949,  
22 under order of the Collector of Internal Revenue for the  
23 District of Connecticut, agents of the Internal Revenue  
24 walked into the Mystic River National Bank, Mystic,  
25 Connecticut, and seized \$6,133.80 from my bank account.



1           This money, a total of \$7,719.20, was forcibly  
2 taken from the bank without a search warrant, in violation  
3 of my rights under the Fourth Amendment, and without due  
4 process of law guaranteed to me by the Fifth and Fourteenth  
5 Amendment. It was not taken for taxes. Not one penny of  
6 taxes was due. It was seized by the Internal Revenue as a  
7 100 percent penalty because I refused to collect income  
8 taxes from my employees.

9           I do not question the constitutionality of the  
10 Sixteenth Amendment. It was passed by Congress and  
11 ratified by three-quarters of the states. However, the  
12 Sixteenth Amendment did not give Congress the power to lay  
13 and collect income taxes. Congress already had that power.  
14 The Sixteenth Amendment did only one thing; it removed the  
15 provision that direct taxes should be apportioned among  
16 the several states without regard to any census or  
17 enumeration.

18           Certainly the Sixteenth Amendment did not appoint  
19 me a tax collector, nor did it give Congress the power to  
20 force me to collect taxes. Neither I, nor anyone else, has  
21 the right to take money for any purpose whatsoever, out of  
22 the pay envelope of an employee without the permission of  
23 that employee.

24           Therefore, since I did not wish to collect taxes,  
25 I sued to recover the penalty money which has been illegally

1 seized because I refused to do so.

2 It was not a simple suit. By tortured reasoning  
3 which I am unable to follow, Judge Hincks decided there  
4 should be two suits, although they were tried simultaneous-  
5 ly. The first money was taken by order of the Acting  
6 Collector, not an appointed agent of the Government. Since  
7 a citizen may not sue the Government without permission,  
8 when the Government does grant such permission, the citizen  
9 cannot have a jury trial. This is not clear to me. How  
10 can there be a super-government, a government above a  
11 government? We do not have a king nor a dictator. Our  
12 government is the creation of our Constitution, and exists  
13 by consent of the people. How can a judge declare that  
14 the Government is above the Constitution, and, therefore,  
15 may refuse the people the right to a jury trial? But that  
16 is what Judge Hincks decided.

17 The second money was seized by order of the  
18 Collector of Internal Revenue, a duly appointed agent of  
19 the Government. I did not need permission to bring this  
20 suit. I sued the Collector of Internal Revenue, the agent  
21 of the Government, in the United States District Court, in  
22 New Haven, Connecticut.

23 It was all one trial, same lawyers for both sides,  
24 same witnesses, only one session in Court. The judge heard  
25 the suit against the Government, the jury heard the case



1 against the agent of the Government. The jury, after  
2 deliberating two and one-half hours, found for me. The  
3 judge, after deliberating three months, found for the  
4 Government.

5 I would like to explain that figure of sixteen *hundred*  
6 dollars and -- \$1685.40.

7 When the Government seized that amount, half of  
8 that was for taxes, which they knew had been paid. But  
9 they seized it anyway. And the other was a penalty. There  
10 was a \$10.00 charge for something I don't know. A penalty  
11 of some kind. But at any rate, after the judge had  
12 deliberated three months and found for the Government, the  
13 Government re-paid me \$847.70. So the penalty in that  
14 case was not 1600, it was \$837.70.

15 The suit I now bring before this Court is  
16 practically identical with that suit. By order of the  
17 Commissioner of Internal Revenue, many thousands of  
18 dollars have been taken from me as a penalty because I have  
19 no husband. I seek to recover this money and I am suing  
20 the Commissioner of Internal Revenue, the duly appointed  
21 agent of the Government. Therefore, I am entitled to a  
22 jury trial.

23 In 1969, Congress passed the following act:  
24 "There is hereby established under Article I of the  
25 Constitution of the United States, a court of record to be

1 known as the United States Tax Court. The members of the  
2 Tax Court shall be the chief judge and the judges of the  
3 Tax Court."

4 The 1974 Prentice-Hall Federal Tax Service  
5 describes the status of the United States Tax Court as  
6 follows:

7 "The United States Tax Court (formerly the Tax  
8 Court of the United States and, before that, the Board of  
9 Tax Appeals) is now a court of record established under  
10 Article I of the United States Constitution. In general,  
11 its powers and functions will continue as before, except  
12 that it has now the same powers as the District Court with  
13 regard to contempt, writs, orders, et cetera.

14 "The Tax Court is not a mere reviewing Court. It  
15 may try cases de novo and render a decision on the evidence  
16 before it, rather than on a mere review of the record before  
17 the Commissioner."

18 This description was verified by Judge Drennen,  
19 at that time, Chief Judge of this Court, in testimony before  
20 the Subcommittee of the Committee on Appropriations, of  
21 the House of Representatives, on March 20, 1970, and I  
22 quote.

23 "Mr. Steed. Judge, I am not very much up on my  
24 mystery of why these appropriation  
25 bills are organized the way they are."



"Some of them were already set up when I got here on this particular subcommittee. The title of our bill is 'Post Office, Treasury and Executive Offices.' When I think about you, I wonder how we got you. Are you a member of the legislative, judicial or administrative branch of Government?

"Judge Drennen. I imagine that you got us because up until the beginning of this year we still had the title of independent agency within the executive branch of the Government. Now, under the Tax Reform Act, we are a court under Article I of the Constitution. All we know is that we are no longer in the executive branch, but we don't know whether we are in the judicial or legislative branch...

"Mr. Steed. It just intrigued me to notice how we got in the habit of listing everything one way or the other and then you come along and I am just not sure what label you are entitled to."

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

4  
5  
6

7  
8  
9  
10  
11  
12  
13

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 "judiciary or legislative branch of  
2 the Government.

3 "So, as a result, they more or less  
4 just have to deal directly with every-  
5 body that they have problems with.

6 They are even outside the jurisdic-  
7 tion of the Bureau of the Budget,  
8 when you get right down to the legal  
9 status of it.

10 "I don't know any word to apply to  
11 them, since they are no part of either  
12 of the three branches of the Federal  
13 Government, except they are just an  
14 orphan agency."

15 On May 27th, 1971, Judge Drennen elucidated fur-  
16 ther before the Subcommittee of the Senate Committee on  
17 Appropriations:

18 "Judge Drennen. ...the status of the court was  
19 changed, so it is an Article I court  
20 instead of an independent agency  
21 within the executive branch. This  
22 gives us the full powers of a court  
23 to enforce subpoenas and contempt  
24 powers and so forth. I don't know  
25 that it is going to create too much"

1 change."

2 "We are going to have to take a look  
3 at old rules to see whether they  
4 should be reviewed, and I think in  
5 all liklihood we will revise them  
6 to bring them into accord with  
7 Federal rules of civil procedure  
8 insofar as those rules are applicable  
9 to the type of court we are, which  
10 has no jury trials and has nationwide  
11 jurisdiction.

12 "Senator Yarborough. You were a tax court in name  
13 but considered also to be an execu-  
14 tive agency of the Government?

15 "Judge Drennen. That is right.

16 "Senator Yarborough. But this change makes the  
17 court or constitutes the court as  
18 part of the judicial system, does it  
19 not, or does it leave you as a  
20 quasi-judicial branch?

21 "Judge Drennen. Senator, I wish I knew. All we  
22 know is, we are not in the  
23 executive branch.

24 "Senator Yarborough. I just thought in case  
25 people of the committees wanted to"



- 51 -

"ask about whether this reorganiza-  
tion left you fully judicial in name  
and also in function.

"Judge Drennen. In function and name, I think we  
are fully judicial, but where we  
stand, I don't know."

In view of the foregoing testimony, I have serious  
reservations as to the validity of this Court. How can a  
court, or any other agency, operate outside the Government  
if you are "even outside the jurisdiction of the Bureau of  
the Budget, when you get right down to the legal status of  
it," I fail to see how you can function as a part of the  
United States Government. However, at this time, I do not  
choose to go into this question, but I wish to make it  
clear that my appearance before you today in no way  
invalidates my right to return to this subject at some  
future date.

If you do not like the Seventh Amendment, the  
remedy is plain. You can pass another Amendment and  
repeal it. The Sixteenth Amendment did not repeal it. If,  
on the other hand, you are a fully constituted court with  
"full powers of a court to enforce subpoenas and contempt  
powers and so forth," as claimed by Judge Drennen, then you  
are subject to, and must abide by, the constitutional  
rules and safeguarding <sup>S</sup> ~~the safeguards~~ governing such

1 courts. And you must make sure that all of the rights  
2 guaranteed in the Constitution of the United States are  
3 carefully preserved and protected. Among these is the  
4 right to a trial by jury, guaranteed by the Seventh  
5 Amendment, and it is your duty to see to it that I, or any  
6 other American citizen who comes before you and asks for a  
7 jury trial, is given one.

8 Therefore, Your Honor, I respectfully request that  
9 you set a date, impanel a jury and permit me to try this  
10 case under your supervision.

11 THE COURT: Thank you, Miss Kellem. S

12 Miss Poe --

13 MISS KELLEMS: I would like -- may I --

14 THE COURT: Yes.

15 MISS KELLEMS: Just one more. I would like to  
16 offer this as an Exhibit, with your permission.

17 THE COURT: Well, it's already in the record.

18 MISS KELLEMS: All right, then.

19 THE COURT: Or in the transcript; it's in the  
20 record.

21 MISS KELLEMS: Very well.

22 Then I would like to offer as an Exhibit --  
23 these are authentic copies of the trial of 1950, on which  
24 I had a jury trial in the case --

25 THE COURT: Well, that was in the District



1 Court though.

2 MISS KELLEMS: It was in the District Court in  
3 New Haven, Connecticut.

4 THE COURT: Yes.

5 MISS KELLEMS: But I have --

6 THE COURT: It's not pertinent here. I'm not  
7 going to receive it in evidence, separately.

8 MISS KELLEMS: Well, then may I put it in as --  
9 for the record.

10 THE COURT: It's not pertinent.

11 MISS KELLEMS: It's very pertinent because --

12 THE COURT: No, it's not.

13 MISS KELLEMS: Well, I don't care to --

14 THE COURT: No, I don't think it is.

15 MISS KELLEMS: -- very well. I abide by your  
16 decision.

17 THE COURT: Thank you.

18 MISS KELLEMS: Now, may I go further, please?

19 THE COURT: Yes.

20 MISS KELLEMS: I would like to ask you what you  
21 would like for me to do? I am here as my own attorney  
22 and I am here as a witness.

23 Would you like me to take an oath as a witness,  
24 because Miss Poe will probably want to ask me some  
25 questions?

1 THE COURT: Well --

2 MISS KELLEMS: Or may I finish? I have further  
3 argument in this.

4 THE COURT: On the same point you've been  
5 discussing?

6 MISS KELLEMS: Yes.

7 THE COURT: Well, we will not have any further  
8 argument on this point at this time --

9 MISS KELLEMS: I'm very sorry, Your Honor --

10 THE COURT: Just a moment. At this time.

11 MISS KELLEMS: I have a Supreme Court case to  
12 quote here, and I must insist, if you please, that I be  
13 permitted to present this case. If you don't care to hear  
14 it --

15 THE COURT: All right. Proceed.

16 MISS KELLEMS: Very well.

17 While I have chosen to predicate my case chiefly  
18 upon the Seventh Amendment, two more, the Fifth and the  
19 Fourteenth Amendments, must be considered.

20 The Fifth Amendment states expressly, "Nor shall  
21 any person be deprived of life, liberty or property without  
22 due process of law."

23 The Fourteenth Amendment: "or shall any state  
24 deprive any person of life, liberty or property without due  
25 process of law, nor deny to any person within its"



1 "jurisdiction the equal protection of the law."

2 It would be repetitious for me to go into the  
3 violation of the fundamental rights of American citizens  
4 under these two amendments, since the Longs went into the  
5 matter quite fully. That position was, and I concur, that  
6 we have here two laws, one for people who are rich, <sup>and</sup> ~~and~~  
7 one ~~people~~ <sup>a</sup> law for people who are poor. If you are  
8 rich --

9 THE COURT: Miss Kellems, I'm going to let you  
10 proceed, but I want you to know that I'm being extremely  
11 lenient, because what you're stating is a matter that should  
12 be included in your brief for this Court, not in any  
13 statement here before this Court.

14 MISS KELLEMS: You see, but that may be --

15 THE COURT: You're going to be permitted to file  
16 briefs, and you can make all the constitutional arguments  
17 your heart desires at that time.

18 MISS KELLEMS: That may be, Your Honor, but I have  
19 prepared this. It's extremely important. And I wish to  
20 have a decision on a jury trial before I proceed with the  
21 other case.

22 THE COURT: You will get a decision.

23 MISS KELLEMS: Very well.

24 Then may I proceed, please?

25 THE COURT: Go ahead.

1                   MISS KELLEMS: If a person can afford to pay the  
2 tax, they may go into the District Court and have a jury  
3 trial. If they cannot afford to pay the tax, they can come  
4 into the tax court and have a trial before the judge. So,  
5 the Longs said -- and I agree with them -- that we have  
6 two laws here: one for the rich and one for the poor.

7                   I have here a comprehensive report by Mr.  
8 Mitchell Rogovin, who at that time, was Assistant Attorney  
9 General in the Tax Division. And he made a comprehensive  
10 study of the three Courts: the Tax Court, the Court of  
11 Claims, and the District Court. And I think this is  
12 important. This was tendered on June 27th, 1968. I think  
13 this is very important, because I believe that ~~that~~ the  
14 1969 law, was based upon Mr. Rogovin's findings. And I  
15 shall quote very briefly just two quotations.

16                   He said, "The present system makes access to the  
17 available ~~forms~~ <sup>ways</sup> dependent on ability to pay the tax  
18 assessed by the Government. The full advantages of ~~fortu~~  
19 shopping are available to the taxpayer with an income,  
20 estate or gift tax dispute only if he can afford to pay the  
21 tax before litigation. Otherwise, he may enter only the  
22 Tax Court."

23                   And then later in this brief he said, "The most  
24 inequitable feature of the present system is the discrimina-  
25 tion between taxpayers who are able to pay the tax in"



1 "advance, and thereby gain access to the District Court or  
2 Court of Claims, and those who are not. While concurrent  
3 jurisdiction would not be as effective in realizing some of  
4 the other goals of tax adjudication as would exclusive  
5 jurisdiction, it would eliminate that discrimination."

6 And in testimony before the subcommittee on  
7 improvements in the judiciary machinery, on July 9th, 1969,  
8 Assistant Attorney General Mitchell <sup>Rogers</sup> wrote, and I <sup>quote</sup> state,  
9 "The discrimination of the present system in favor of the  
10 taxpayer who is able to pay the tax claimed by the  
11 Commissioner in advance of litigation is impossible to  
12 justify on the basis of equity or public interest."

13 I have here Judge Scott's decision in the Long  
14 presentation, and if I may say so, the Longs were permitted  
15 unlimited time to make their presentation. And Judge  
16 Scott gave a decision which I have here, but she was just  
17 a bit confused. She goes to some length to prove that a  
18 jury trial does not violate the Sixth Amendment, which had  
19 not been questioned by the Longs. Indeed, they had not  
20 even referred to the Sixth Amendment. They placed great  
21 emphasis on the Fifth and Fourteenth Amendments, but Judge  
22 Scott chose to ignore these Amendments completely. She  
23 did mention the Seventh Amendment.

24 || Petitioner asserts in the alternative that he is  
25 entitled to a jury trial by reason of the Seventh

1 Amendment of the Constitution which guarantees a jury trial  
2 where required at common law.

3 "He contends that what we have here is an action of  
4 common law debt for which a jury trial was required.

5 "If this were true, all actions for the collection  
6 of taxes would be actions of debt, as the law -- other  
7 statutory proceedings involved -- involving a sum of  
8 money.

9 "Such a broad view of the common law action of  
10 debt is not tenable."

11 However, the Judge was even more confused as the  
12 Longs were not suing for taxes; they were suing for  
13 penalties and interest, as am I. There was no question of  
14 tax in the Longs' case. There is no question of taxes in  
15 my case.

16 In 1950, I sued for penalties illegally taken  
17 from me, and I am suing for penalties and interest in this  
18 case.

19 Judge Scott relied chiefly on Olshausen versus  
20 Commissioner decision, which, of course, does not apply at  
21 all, since this case was decided in 1959, 10 years before  
22 this Court was constituted a constitutional Court under  
23 Article I. She relied on the Revenue Code of 1954, and  
24 I quote: "The provisions of the Revenue Code of 1954, as  
25 amended by the Tax Reform Act of 1969, concerning trials"



1 "before the Tax Court are, insofar as here pertinent, the  
2 same as the <sup>longstanding</sup> provisions of the 1939 Code."

3 These provisions applied, Your Honor, in 1959,  
4 when this Court was an agency under the executive branch  
5 of the Government. But they do not apply since 1969 when  
6 this agency was made a constitutional Court by act of  
7 Congress.

8 However, it is not necessary for me to refute the  
9 claims of Judge Scott, as the Supreme Court has thoroughly  
10 done so in a recent decision. I refer to the decision of  
11 Pernell versus Southall Realty, on April 24th, 1974. This  
12 was a unanimous decision, written by Justice Marshall.  
13 The Court puts the right to a jury trial squarely under  
14 the Seventh Amendment and takes the position that any  
15 citizen is entitled to a jury trial whenever rights and  
16 remedies are enforceable at law rather than in an action  
17 at equity or admiralty. And with your permission, I would  
18 like to just read two or three paragraphs from this  
19 decision. As I said, this is <sup>P</sup>ernell versus Southall  
20 Realty, April 24th, 1974.

21 "P<sup>ernell</sup> requested a trial by jury, claiming  
22 that the Seventh Amendment guaranteed the right to trial  
23 by jury in all cases brought under 16-1501 and, alterna-  
24 tively, that he was entitled to a jury trial in this case  
25 by virtue of the counterclaim and set-off specified in his"

- 60 -

1 "answer."

2 And that is what I'm asking for. I'm asking for  
3 a set-off for the money which the Government has illegally  
4 taken from me, against the money which the Internal Revenue  
5 allegedly claims I owe.

6 This Court has long assumed that actions to  
7 recover land like damages to a person or property are  
8 actions at law, triable to a jury. For example, we  
9 recognize that it would be difficult and perhaps impossible  
10 to state any general rule which would determine in all  
11 cases what should be deemed a suit in equity as distinguished  
12 from an action at law. But this may be said that where an  
13 action is simply for the recovery and repossession of  
14 specific real or personal property, or for the recovery of  
15 a money judgment, the action is one at law.

16 Further, we recently had the occasion to note  
17 that while the thrust of the Amendment was to preserve the  
18 right of a jury trial as it existed in 1791"-- I forgot to  
19 say that this decision was written by Justice Marshall and  
20 was a unanimous decision -- it has long been settled that  
21 the right extends beyond the common law forms of actions  
22 recognized at that time. The phrase, "suits at common  
23 law" includes not only suits which the common law  
24 recognized among its old and settled proceedings, but suits  
25 in which legal rights were to be ascertained and determined



1 in contradistinction to those where equitable rights alone  
2 were recognized and equitable remedies administered. In  
3 a just sense, the amendment may -- then may be construed to  
4 embrace all suits which are not of equity and admiralty  
5 jurisdiction; Whatever might be the peculiar form, they  
6 may assume to settle legal rights. Whether or not a close  
7 equivalent to 16-1501 existed in England in 1791 is  
8 irrelevant for Seventh Amendment purposes, for that  
9 amendment requires trial by jury in actions unheard of at  
10 common law, provided that the action involves rights and  
11 remedies of the sort traditionally enforced in an action  
12 at law rather than an action at equity or admiralty.  
13 Certainly this is not an action in either equity or  
14 admiralty.

15 And, in closing, the Seventh Amendment is  
16 generally inapplicable in administrative proceedings where  
17 jury trials would be incompatible with the whole concept of  
18 administrative adjudication. But where the action involves  
19 rights and remedies recognized at common law, it must  
20 preserve<sup>to</sup> the parties their right to a jury trial. //

21 As an administrative agency, I can well under-  
22 stand that this Court did not have the power to have a  
23 jury trial. But in 1961, when this Court was made a  
24 constitutional Court, under Article I, with all of the  
25 rights: the right to subpoena; the right to try a case

1 from the beginning. Then it changed matters, and this  
2 Court must give a jury trial.

3 In closing, Your Honor, may I say that I am a  
4 law-abiding citizen. I have never refused to pay an  
5 income tax. I am not now refusing to pay.

6 In 1950, every tax was paid. And in this case,  
7 I am suspending payment until Congress abolishes that  
8 penalty tax on single people and the Courts decide its  
9 constitutionality and give me a jury trial.

10 In both instances, I'm exercising my right as an  
11 American citizen, my right to a test case. I realize  
12 that when I question the law in this manner, I do so at  
13 my peril. I am subject to all of the penalties the law  
14 provides. But I have chosen to take that risk because the  
15 wrong is so grievous.

16 But I take these actions within the framework of  
17 the Constitution. I'm an old lady. I'm not good at  
18 burning bras or demonstrating in the streets. I have gone  
19 to the Congress and to the Courts. For five years I have  
20 tried to get a law passed abolishing the unjust and  
21 un-Constitutional penalty tax on single people. And for  
22 five years that bill has been bottled up in the House  
23 Ways and Means Committee. Repeatedly, I have been told  
24 that it would be reported to the House favorably. In 1972,  
25 I appeared with Mr. Mills at his invitation, in Boston, at



1 both a press conference and television -- on television,  
2 where he publicly promised me that this bill would pass.  
3 The story was carried all over the country, and I have  
4 samples as it appeared in the papers if you care to look  
5 at it. But the Bill is still in the Committee.

6 Recently, I have been assured by both  
7 Representative Griffith and Representative Burke, members  
8 of that Committee, that it would be reported out favorably  
9 this time, and I have an appointment with Mr. Mills this  
10 afternoon to once more discuss it. I have Mr. Burke's  
11 letter here if you would like to see it. I have a copy of  
12 an interview by *Marianne Means* Mary Ann Wings way last February, with  
13 Mr. Mills, in which she said publicly at the --

14 THE COURT: Yes, Miss Poe.

15 MISS POE: Your Honor, Respondent would only ask  
16 at this stage whether we're still within the framework of  
17 the 91f motion or --

18 THE COURT: We've never gotten within the  
19 framework at the beginning, of 91f.

20 MISS POE: Or whether we are proceeding to the  
21 merit of Petitioner's case.

22 THE COURT: Yes.

23 MISS KELLEMS: I'm almost through, if you will  
24 bear with me, please.

25 I have diligently pursued this matter in the

1 Courts. One of the most highly respected and able  
2 attorneys in this city brought suit in this Court, and I  
3 sat here and saw Mr. Shelton insulted and humiliated by a  
4 Judge of this Court. He fared no better in the Second  
5 District Court of Appeals. That Court didn't even write  
6 an opinion. It didn't have the courtesy to send Mr. Shelton  
7 notice of its decision. He read about it in the newspaper  
8 and received notice one week later. The Supreme Court  
9 didn't even hear the case. Do you wonder that he did not  
10 want to try again?

11 That is why I am here today. I am not refusing  
12 to pay a tax, but I must still suspend payment until this  
13 issue, and now the issue of a jury trial, are resolved.  
14 I'm sorry Miss Poe has spent hours on those tax returns  
15 and figures because they are hopelessly wrong. I'm no good  
16 at figures; I can't even fill out a 1040 return. It is  
17 completely beyond me. However, I have had an excellent  
18 accountant go over them, and at the proper time I shall be  
19 glad to discuss them. But before doing so, these two  
20 issues must be settled by the Congress and by the Courts.  
21 Until such time, I must refuse to comply with all of the  
22 rules and regulations and all of the manuals in 33 feet of  
23 books of the Internal Revenue or any of its 1,000 pages of  
24 index.

25 Your Honor, I am here today, as is my right as an



1 American citizen and I ask for your protection and for your  
2 just action.

3 Thank you.

4 THE COURT: Thank's, Miss Kellems.

5 Miss Poe, would you like to respond?

6 MISS POE: Your Honor, first, the Respondent would  
7 note that we're not prepared today for a Seventh Amendment  
8 trial by jury, <sup>argument</sup> ~~are you~~, by Miss Kellems.

9 THE COURT: And let the record reflect that the  
10 Court is not prepared for a Seventh Amendment argument  
11 today.

12 MISS POE: And we would like to reserve to brief  
13 any response with respect to that. I would only note, in  
14 passing though, as this Court knows, that the power given  
15 an individual to sue the Government is given by the  
16 Government and usually under the terms and conditions the  
17 Government allows. That this is not a refund suit; that the  
18 suit springs from a statutory notice of deficiency sent  
19 Petitioner, and she has made claims of overpayment of taxes  
20 in her answers, and <sup>in</sup> in her petitions to this Court in  
21 response to those statutory notices of deficiency.

22 And Respondent would further note that the Court,  
23 itself, has upheld its constitutional status under its  
24 Article I standing in the case of Burnsticks Friedman &  
25 Company. Now, that's F-r-i-e-d-m-a-n & Company, at 57

1 Tax Court, 392, a decision filed December 16, 1971,  
2 opinion written by Judge Drennen.

3 With respect to the Rule 91f motion, Respondent would  
4 say at this time that he sees no reason why paragraph  
5 39 cannot be admitted by the parties.

6 As this Court has noted, paragraph 38 refers to  
7 a frame house Petitioner sold in 1967. In Schedule D of  
8 Petitioner's 1967 return, which is Exhibit 2b of the  
9 stipulation of facts filed with this Court today, with the  
10 Clerk, Petitioner has set forth a sales price of \$15,135.50.

11 Now, also in that schedule, Petitioner has claimed  
12 a basis in the property of \$21,603.26. And Respondent  
13 understands Petitioner claims a loss of \$6,467.76.

14 Now, as Respondent understands ~~that~~ the question  
15 at issue with respect to the funds held <sup>is</sup> goes to Petitioner's  
16 basis in the property, and whether looking at Respondent's  
17 statutory notice of deficiency, which ~~is~~ <sup>is</sup> her income with  
18 respect to the property, or the tax returns Petitioner  
19 filed, which claims a loss of some \$6,000, both parties are  
20 basing their figures on that \$15,135.50 figure. And  
21 Respondent just does not understand why that figure cannot  
22 be deemed established for purposes of this case.

23 THE COURT: Thank you, Miss Poe.

24 Miss Kellems, on this paragraph -- I'll get back  
25 to the other matter. Don't worry -- on this paragraph 39



1 of the second stipulation -- second supplemental stipulation  
2 of facts, where it says, "Petitioner sold the frame house  
3 referred to in paragraph 38 above for the sum of  
4 \$15,135.50," and since that figure is listed from your own  
5 tax return, as the sales price, is there any reason why  
6 you cannot stipulate that that was the sales price?

7 MISS KELLEMS: Your Honor, if you don't mind, I  
8 really don't want to go into this today. I must ask your  
9 indulgence. I have been very ill. I got out of the  
10 hospital to come here. I'm not prepared to discuss these  
11 figures and I don't want to until I have my accountant  
12 with me. I must ask, please, that this other matter be  
13 adjudicated before.

14 THE COURT: But you knew that this order to show  
15 cause was on this session this morning.

16 MISS KELLEMS: Yes, I knew that.

17 THE COURT: All right.

18 MISS KELLEMS: But I feel that --

19 THE COURT: Then why didn't you bring your  
20 accountant with you?

21 MISS KELLEMS: Because I'm not prepared to go into  
22 this case until we adjudicate this question of a jury  
23 trial.

24 THE COURT: Well --

25 MISS KELLEMS: I must ask for a postponement,

1 Your Honor.

2 THE COURT: Well, since this figure, the sales  
3 price of this piece of real estate that was sold on the  
4 7th of June, 1966, since this figure of \$15,135.50 is from  
5 your very own tax return, I am going to enter an order,  
6 and it's hereby ordered that paragraph 39 of the proposed  
7 second supplemental stipulation of facts, Exhibit A  
8 attached to Respondent's motion, filed April 12, 1974,  
9 together with joint Exhibits No. 8h through 15o attached  
10 thereto, is accepted as established for the purpose of  
11 these cases.

12 So I've ruled on that motion, have taken care  
13 of that motion.

14 Now, as respect to the matter which you have  
15 been arguing at length, regarding the Seventh Amendment to  
16 the Constitution, I'm going to take a 30-minute recess at  
17 this time, and then I will return and tell you what  
18 disposition I'm going to make of this matter at that time.  
19 So the Court is in recess for 30 minutes.

20 (Whereupon, at 10:45 o'clock a.m., the Court was  
21 recessed for 30 minutes.)  
22  
23  
24  
25



1 (Whereupon, at 11:15 o'clock a.m., the hearing  
2 was reconvened.)

3 THE CLERK: Be seated.

4 The Court is now in session.

5 THE COURT: Miss Kellems, the statement which you  
6 made and which is a part of the record, after you made that  
7 statement, you had it in writing and you offered to intro-  
8 duce it as an Exhibit.

9 MISS KELLEMS: Yes. Yes.

10 THE COURT: May I have that as an Exhibit?

11 MISS KELLEMS: Oh, yes, you ~~can~~ *may*.

12 THE COURT: I want to take it now as an Exhibit.  
13 Now, I'll have the Clerk mark it and I want to receive it  
14 in evidence.

15 MISS KELLEMS: Do you wish the -- do you wish  
16 both -- I read -- I read the final statement to you. Do  
17 you wish both of those?

18 THE COURT: I wish anything that you wish to  
19 present in evidence, that the Court will be glad to receive  
20 it.

21 MISS KELLEMS: Yes.

22 This is the opening statement.

23 (Pause.)

24 MISS KELLEMS: I'm sorry --

25 THE COURT: That's all right. Take your time.

1           MISS KELLEMS: Oh, I'm terribly sorry. I need  
2 all the help I can get.

3           Your Honor, I think, with your permission, I would  
4 still like to put in that. These are authentic documents  
5 and copies of the documents of the case of 1950 which I  
6 consider very important --

7           THE COURT: I'll be glad to receive them in  
8 evidence. Have the Clerk mark them. They'll be received  
9 in evidence.

10          MISS KELLEMS: Thank you.

11          MISS POE: Your Honor, Respondent would, for the  
12 record, note objections on the basis of relevance and  
13 materiality.

14          THE COURT: Your objection has merit.

15          MISS KELLEMS: That is the 1950 case.

16          This is the closing statement.

17          I have also -- I read the remarks that I made  
18 regarding Judge Scott's statement. Would you like that,  
19 too?

20          THE COURT: No, I have that -- we have that  
21 decision.

22          MISS KELLEMS: Yes.

23          Would you like Mr. Burke's letter of promising he'd  
24 pass that law?

25          THE COURT: If you wish to submit it, the Court



1 would be glad to receive it.

2 MISS KELLEMS: Well, it's the original, and I  
3 have --

4 THE COURT: Well, you may remove the original  
5 and make a copy. But give it to the Clerk and have him  
6 mark it as an Exhibit.

7 MISS KELLEMS: Yes.

8 THE COURT: A little later you can remove it and  
9 make a copy of it.

10 MISS POE: Your Honor, could I see that letter?

11 THE COURT: Yes, you may.

12 Show it to Miss Poe, please.

13 MISS KELLEMS: Yes. I will be happy to. Just  
14 a moment.

15 And you have, of course, the Supreme Court  
16 decision. It isn't necessary -- I --

17 THE COURT: No, it's not necessary.

18 MISS KELLEMS: It's not necessary.

19 You also have Mr. Rogovin's --

20 THE COURT: Yes.

21 MISS KELLEMS: -- thing.

22 THE COURT: You may report.

23 MISS KELLEMS: This is the closing. I didn't  
24 give you the closing statement, did I?

25 THE CLERK: Yes, ~~Miss~~ <sup>Miss</sup> Kellems, I have the closing  
statement.

1 MISS KELLEMS: No, you have the opening, but I  
2 didn't --

3 THE CLERK: Yes, ma'am. You gave me the second  
4 copy.

5 MISS KELLEMS: I did? And this list belongs  
6 to that case.

7 Just a minute. I'm sorry.

8 MISS POE: Do I understand the latter documents  
9 were part of the earlier case of Miss Kellems that were  
10 ~~mentioned a bit ago~~  
~~mixed quite a bit?~~

11 THE COURT: Yes.

12 MISS POE: Okay. Respondent's objection still  
13 stands with respect to those documents.

14 MISS KELLEMS: Would you like to have these  
15 newspaper clippings?

16 THE COURT: No, thank you. We don't need them.

17 MISS KELLEMS: And you don't care for the <sup>Mary</sup>  
18 <sup>mean's</sup>  
~~Ann Mead's~~ article?

19 THE COURT: No.

20 MISS KELLEMS: Here it is.

21 You say that I may have a copy back of this?

22 THE COURT: Yes, you may.

23 MISS KELLEMS: Thank you.

24 I think that covers it.

25 THE COURT: All right. Thank you, Miss



- 73 -

1 Kellems.

2 MISS POE: Your Honor, Respondent would object to  
3 this letter on grounds of materiality relevancy and hearsay.

4 THE COURT: Your objection has merits and I will  
5 receive it for what it's worth, if anything.

6 So received.

7 Miss Kellems, I've given consideration to your  
8 arguments that you are entitled to a jury trial by virtue  
9 of Amendment 7 of the United States Constitution, and all  
10 the other arguments that you have made. And I'm going to  
11 render a decision on that point now from the bench.

12 First, I want to call your attention to Section  
13 7453 of the Internal Revenue Code, which is titled, "Rules  
14 of Practice Procedure and Evidence."

15 Section 7453 reads: "Except in the case of  
16 proceedings conducted under Section 7453, the proceedings  
17 of the Tax Court and its divisions shall be conducted in  
18 accordance with such rules of practice and procedure, other  
19 than rules of evidence, as the Tax Court may prescribe,  
20 and in accordance with the rules of evidence applicable  
21 in trials without a jury in the United States District  
22 Court for the District of Columbia." Which makes it very  
23 clear that we follow the rules of trial without a jury in  
24 United States District Court in the District of Columbia .

25 The Court would like to call to your attention

1 the decision of this Court in Emma R. Dorl. That's  
2 E-m-m-a R. Dorl, D-o-r-l. It's 57 United States Tax  
3 Court, page 720. It is a decision by Chief Judge Dawson  
4 of this Court, and a decision that was entered on  
5 March 7, 1972, that was a case that was decided subsequent  
6 to the Revenue Act of 1969 which made this Court an  
7 Article I Court.

8 I particularly call your attention to the last  
9 paragraph in the Dorl opinion, wherein it states as  
10 follows: "There is no merit to Petitioner's request for a  
11 trial -- for a jury trial in the Tax Court. See Wickwire"  
12 -- that's W-i-c-k-w-i-r-e versus Reinecke, R-e-i-n-e-c-k-e,  
13 275 U.S. 101, at page 105, a 1927 appen. Phillips versus  
14 Commissioner, 283 U.S. 589, page 599, footnote 9, a 1931  
15 decision, and Olshausen, O-l-s-h-a-u-s-e-n versus  
16 Commissioner, 273 Fed 2d, 23, pages 26-27, an opinion by  
17 the United States Court of Appeals by the Ninth Circuit, in  
18 1959, affirming, in part, a memorandum opinion of this  
19 Court. "The provisions of the Internal Revenue Code of  
20 1954, as amended by the Tax Reform Act of 1969, concerning  
21 trials before the United States Tax Court, remain unchanged;  
22 consequently, we hold that the Petitioner is not entitled to  
23 a jury trial in this Court."

24 Now, one of these cases cited in that last  
25 paragraph -- I just wanted to read a sentence or two from



1 that, and that is from the case of Olshausen versus  
2 Commissioner of Internal Revenue. I am reading from page  
3 27, where it is stated, in part, as follows: "Having taken  
4 advantage of the deficiency notice procedure by filing a  
5 petition in the Tax Court without paying the tax first,  
6 Petitioner now makes the claim that he was deprived thereby  
7 of a jury trial. Such deprivation was due to his own act.  
8 If he desired a jury trial, he should have paid the tax  
9 first and then sued for a refund in the District Court.  
10 There is no right to a jury trial without paying first as  
11 a statutory matter." And there is inside a Supreme Court  
12 decision of Florida versus United States, 1958, 357 U.S. 63.  
13 "And no right to a jury trial of all in tax matters as a  
14 constitutional requirement."

15 Therefore, on the basis of this Court's opinion  
16 in Emma R. Dorl, and the authority cited therein, the  
17 Court has decided that you are not entitled to a jury  
18 trial in this Court.

19 MISS KELLEMS: May I ask a question?

20 THE COURT: Yes, you may.

21 MISS KELLEMS: Will I be supplied with a written  
22 copy of your decision today?

23 THE COURT: You will -- I assume you're going to  
24 order a copy of this transcript.

25 MISS KELLEMS: Yes, I will.

1 THE COURT: And it will be in there. And I'll  
2 be glad to issue you a separate memorandum sur order to  
3 that effect.

4 MISS KELLEMS: Thank you. I would appreciate it  
5 because I think it will take a little time to get the  
6 transcript.

7 THE COURT: I'll be glad to dictate a memorandum  
8 sur order, which will hold along the lines I've just  
9 indicated.

10 MISS KELLEMS: Yes.

11 I would just like to make one remark, because  
12 I'm not familiar with the case, the Phillips' case. And  
13 then you mentioned the Wickwire?

14 THE COURT: Yes.

15 MISS KELLEMS: But I am familiar with the  
16 Olshausen case, and I think I mentioned that that case was  
17 before this Court became a constitutional Court. I think  
18 that was 1969.

19 THE COURT: I understand.

20 MISS KELLEMS: I just would like to put that in  
21 for the record.

22 THE COURT: I understand that. Fine.

23 Now, this disposes of your argument that you're  
24 entitled to a jury trial.

25 Now, as respect the trial of this case from the



1 merits -- and that's what this hearing was specially set  
2 down for -- are you ready to proceed?

3 MISS KELLEMS: No, Your Honor, I'm not. And I  
4 must ask the indulgence of the Court.

5 THE COURT: Why are you not ready to proceed.  
6 You received --

7 MISS KELLEMS: Because I --

8 THE COURT: -- that -- you requested a special  
9 session of this Court at this time --

10 MISS KELLEMS: That is quite correct.

11 THE COURT: -- and you were notified, and we  
12 made a special session at this time rather than have you  
13 wait until October.

14 MISS KELLEMS: I understand that, Your Honor,  
15 but I -- and I'm sorry to plead --

16 THE COURT: Yes.

17 MISS KELLEMS: -- but I must. But I have been  
18 seriously ill. I was in the hospital Monday. I'm just out  
19 of the hospital. I had a blood transfusion in order to  
20 come here today. I felt that it was of such importance  
21 to get this before the Court, and also, when I am ready to  
22 try the other. And I must ask for just a little time. I  
23 don't need much, three weeks, or maybe a month or six  
24 weeks. I wish to bring witnesses because I have serious  
25 charges of fraud and fraudulent returns. And I wish to

1 bring witnesses and try this case as it must be tried if  
2 you are to get a complete picture of what the situation is.  
3 And so I'm sorry to have to do it this way, but I'm just not  
4 physically able to do it today, and I'm not prepared. So I  
5 would like it, if you would, please, give me an extension.

6 THE COURT: In view of the circumstances which  
7 you've just indicated, then, Miss Kellems --

8 MISS POE: Your Honor?

9 THE COURT: Yes.

10 MISS POE: If Respondent could, please, at this  
11 moment --

12 THE COURT: You may.

13 MISS POE: -- we would object strenuously to any  
14 delay at all in the trial <sup>on the</sup> and merits of this case. We know  
15 that the years in issue are the years 1966 through 1971.  
16 Now the issues for the years '68 through '71 are  
17 continuing ones. For those years, Petitioner didn't file  
18 forms 1040 setting forth <sup>on</sup> her name, her address, and her  
19 signature.

20 We have tried for some time to get this case to  
21 trial. Initially, we understood from Petitioner's  
22 representative at that time, her counsel, that the present  
23 cases were susceptible to settlement once the Supreme  
24 Court decided her case for the '65 tax year. That was done  
25 and <sup>Certiorari</sup> so ~~surely~~ was denied on October 9, 1973. Trial was set



1 of these cases on the June 3rd calendar of this year. And  
2 that calendar order was issued by this Court on February  
3 25, 1974. On Friday before June 3rd, which was on a  
4 Monday, Respondent was advised for the first time as to  
5 physical incapacity, that is a heart attack on the part of  
6 Miss Kellems. Prior to that --

7 THE COURT: What was that date, Miss Poe?

8 MISS POE: That was the Friday before Monday,  
9 June 3rd, which I believe was May 30th or 31st. It was the  
10 first time Respondent was advised that Petitioner was under  
11 any physical incapacity.

12 At that time, trial was set for June 6th. And,  
13 on June 5th, Petitioner advised again she could not appear  
14 because of physical incapacity.

15 Now -- and the trial was re-set or postponed  
16 until sometime the week of June 17th, at Petitioner's  
17 request and at Respondent's concurrence.

18 Now, at no time during this did Respondent object  
19 to the postponement because of illness. We didn't request  
20 any proof of Petitioner to demonstrate her illness.  
21 Respondent talked -- I talked with Miss Kellems and asked  
22 her when she thought she would be ready for trial. She  
23 agreed to enter into a joint motion with Respondent  
24 requesting a special trial session of this Court any time  
25 from -- about the first week in July through, I believe,

1 next week. That was granted and this trial was set today.

2 With this history, Petitioner has at no time at  
3 personal conferences, by letter, by motion, or by telephone  
4 conversations, indicated that she intended to request a  
5 jury trial in this proceeding or that she did not intend to  
6 proceed on the merits of her case at this time.

7 THE COURT: You did not know in advance of her  
8 appearance this morning that she was going to argue the  
9 Seventh Amendment and the jury trial?

10 MISS POE: That's correct, Your Honor. And we did  
11 not know prior to her attendance this morning that she was  
12 not coming in this morning to try her case on the merits.  
13 And, again, I would note that this case has been calendared  
14 since the calendar order was issued on February 25th of this  
15 year.

16 Now, it's true -- and this is true in the face of  
17 full recognition on Miss Kellems' part, that the Government  
18 was prepared for presentation on the merits.

19 Now, Respondent has not raised any objection to  
20 Petitioner's raising of her trial by jury issue at this time,  
21 notwithstanding it is a 12th hour ~~or a motion~~ <sup>an</sup> argument  
22 as far as Respondent is concerned. And Respondent is and  
23 was fully prepared to brief the argument and to preserve it  
24 with the Petitioner on the <sup>Appeal</sup> Bill.

25 But we would object at this time to any further



1 delay of the trial on the merits.

2 THE COURT: Miss Poe, I have not had an  
3 opportunity to look at the stipulation of facts. They were  
4 just placed in the bench this morning. But, from the very  
5 cursory examination, it would appear that there is a rather  
6 complete stipulation of facts. I notice there's a first  
7 supplemental stipulation of facts and apparently a second  
8 supplemental.

9 MISS POE: Your Honor, there is -- the first  
10 stipulation you have --

11 THE COURT: Yes.

12 MISS POE: -- is essentially procedural facts.  
13 It sets forth -- it attaches her returns and sets forth  
14 procedural facts.

15 The second sup' -- the first supplemental  
16 stipulation of facts, which you have in your hand,  
17 incorporates the record <sup>in</sup> and her prior proceeding for the  
18 1965 tax year.

19 Now, the second supplemental stipulation of  
20 facts is attached to Respondent's Rule 91f motion and  
21 contains admissions as to itemizations of income for the  
22 years in issue as well as basis of property. And that  
23 contains paragraph 20 through 39, with attached Exhibits.

24 THE COURT: Well, is it not true that most of  
25 the pertinent facts have been stipulated?

1           MISS POE: Your Honor, as far as Respondent's  
2 concerned, most of them have. There are -- the question as  
3 far as Respondent understands in this case, boils down to  
4 the questions of the additions to tax, set forth under  
5 Section 6651A, 6653A, and 6654, as to the correctness of  
6 Respondent's determination as to items of income -- that's  
7 taxable income -- including both gross income and  
8 deductions. As to the basis in three properties: the  
9 Encino property, Encino, California; the White Sails Inn  
10 in Stonington, Connecticut, a frame house. And Respondent  
11 understands for the '66 and '67 years at least that  
12 Petitioner has claimed certain medical expense deductions  
13 for special food items. We presume that is still an issue  
14 for the later years, although we've received no direct  
15 re-affirmation of that from Petitioner.

16           THE COURT: The parties at the moment have not as  
17 yet signed the second supplemental stipulation of facts.

18           MISS KELLEMS: Your Honor, that second supple-  
19 mental stipulation of facts is what this Court ordered or  
20 accepted as established for <sup>where</sup> persons in this case.

21           THE COURT: I know. Right. You're correct.

22           MISS KELLEMS: May I respond to this?

23           THE COURT: One moment.

24           Do you have anything else, Miss Poe?

25           MISS POE: Not at the moment, Your Honor.



1 THE COURT: Thank you.

2 Miss Kellems, do you have something?

3 MISS KELLEMS: I'm not the least bit surprised  
4 that the Court and Miss Pee probably doubt my word in  
5 regard to my being ill.

6 This case --

7 THE COURT: We do not doubt your word.

8 MISS KELLEMS: Just a moment, may I, please.

9 You see, in this case, I had this written before  
10 I went to Scotland. I went to Scotland, became—  
11 seriously ill. I came back. I'm prepared to offer to you  
12 hospital records, anything that you wish. I went to  
13 California finally because there's a specialist out there.  
14 I didn't have a heart attack. What I have is a situation  
15 which is very much more serious. I don't think you're  
16 interested in the clinical record, but I have in the  
17 court with me today my maid who has been with me throughout  
18 this whole thing, and if there's any questions that I have  
19 been seriously ill and been in bed for almost three months,  
20 I'll be glad to have Mrs. Smith testify because she's been  
21 with me night and day.

22 THE COURT: There's no question that you've  
23 been ill.

24 MISS KELLEMS: I am not prepared to go ahead  
25 with this, and I feel, Your Honor --

1 THE COURT: Why didn't you advise Respondent?  
2 Why didn't you advise the Court? Why didn't you advise  
3 me that you weren't going to proceed for trial? This  
4 Court is ready to hear this case. This case is old. It  
5 should be tried.

6 MISS KELLEMS: Is this customary? I didn't know  
7 that -- never once have I said to Miss Poe that I would  
8 proceed on the merits of the case. In fact, I said to her  
9 one time, in jest, I said, "You're probably prepared to  
10 slay me, and I'm prepared to slay you." It's been a very  
11 friendly arrangement, and I think that she's quite within  
12 her rights. But, Your Honor, I'm asking for your  
13 indulgence because I feel that this Court, when I present  
14 this, will want the testimony. I didn't stipulate on that  
15 sale of that house. I didn't stipulate on the sale of the  
16 White Sails Inn, because I'm prepared to show that these  
17 are grossly wrong and there's a deliberate attempt to  
18 trick me into signing something which is not true. I had <sup>se</sup>  
19 witnesses. I can prove the filing of false and fraudulent  
20 returns.

21 THE COURT: Well, under --

22 MISS KELLEMS: And I feel it's too important for  
23 you to make this decision today.

24 THE COURT: Well, now, Miss Kellems, just a  
25 moment. Under Rule 91f of our Court, we've already found



1 and have established for the purpose of these cases all  
2 these facts set forth in the second supplemental  
3 stipulation. Those are found as facts. We're not for one  
4 moment going to allow you to put in testimony in contra-  
5 diction of those facts. You had your time to do that and  
6 you didn't do it.

7 MISS KELLEMS: Had I stipulated, but I didn't  
8 stipulated to the White Sails Inn for \$160,000, and I'm  
9 not going to.

10 THE COURT: Well, you should -- you had every  
11 opportunity --

12 MISS KELLEMS: Yes, but --

13 THE COURT: -- to make that objection, but you  
14 didn't.

15 MISS KELLEMS: You want me to sign a lie? I  
16 would be signing a lie and I'm not prepared to commit any  
17 such act.

18 THE COURT: Well, we're not going to hear any  
19 testimony that's --

20 MISS KELLEMS: Very well.

21 THE COURT: -- that relates to any of these  
22 issues that's been stipulated.--

23 MISS KELLEM: I am --

24 THE COURT: -- found under our rule 90 -- 91f  
25 in this case.

1           MISS KELLEMS: I am <sup>in</sup> within your hands. You may  
2 do what you like, Your Honor. But I'm asking your  
3 indulgence and I'm asking --

4           THE COURT: Well, I would like to have this  
5 case tried. I would like to have this thing brought to a  
6 head. It is old. And I do not like cases when they get  
7 old. I like -- it was supposed to be tried today. You  
8 did not advise Respondent that you intended not to try  
9 today. You did not advise this Court that you that you  
10 did not intend to try today.

11          MISS KELLEMS: Well, I'm sorry. That's my  
12 fault because I didn't know I was supposed to.

13          THE COURT: Yes, indeed, there was, because it  
14 was set down for trial.

15          MISS KELLEMS: Your Honor, I'm within your  
16 jurisdiction; I'm in your hands. But if you give me -- if  
17 you force me to go ahead today, I must decline, and I must  
18 say that treatment by this Court is probably what I could  
19 expect in view of what Mr. Shelton got in this same Court  
20 when we came in here originally. I --

21          THE COURT: Miss --

22          MISS KELLEMS: -- of course, will appeal this.

23          THE COURT: Miss Kellems, I think the record  
24 this morning will speak for itself. I think this Court  
25 has leaned over backwards to make sure that you had every



1 opportunity to state that you wanted to state. I let you  
2 make your 35-minute statement. I let you present your  
3 argument. I let you submit what you wanted to for exhibits.  
4 We have been very patient.

5 And, frankly, I am disposed to hear this case  
6 this afternoon or, frankly, I will entertain a motion to  
7 dismiss for failure to prosecute, if the Respondent does  
8 wish to make such a motion.

9 MISS POE: Your Honor, Respondent would so move  
10 in the event Miss Kellems is not prepared to go forward  
11 today. •

12 MISS KELLEMS: You may do what you like, Your  
13 Honor. I think it's grossly unfair --

14 THE COURT: Would you be prepared to try this  
15 case --

16 MISS KELLEMS: No.

17 THE COURT: -- at 1:00 o'clock this afternoon?

18 MISS KELLEMS: No. I'm not physically able to do  
19 it.

20 THE COURT: Respondent, you make a motion to  
21 dismiss for failure to prosecute?

22 MISS POE: Your Honor, we do.

23 THE COURT: All right.

24 Respondent's motion to dismiss for failure to  
25 prosecute is granted. This Court is adjourned.

1 (Whereupon, at 11:40 o'clock a.m., the hearing  
2 was adjourned.)  
3 - - -  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



UNITED STATES TAX COURT

Certificate of Transcriber

8862-72  
3789-71  
Docket No. 6033-73 Name: Vivian Kellems

The foregoing pages, numbers 1 through 52  
inclusive, are the true, accurate and complete transcript  
prepared from the verbal recording made by electronic recording  
by Ann Chumbley on July 25, 1974  
in the United States Tax Court located in WASHINGTON, D.C.  
, in accordance with the applicable  
provisions of the current reporting contract of the Court  
under which I have performed my duties as transcriber.

William Moffit <sup>Em</sup>  
(Name) William-Moffit

July 29, 1974  
(Date)





[ - 2 - ]

1. Petitioner is an individual, who at the time of the filing of the petitions herein resided at Newberry Road, East Haddam, Connecticut.

2. Petitioner timely filed her United States Individual Income Tax Returns for the taxable years ended December 31, 1966, and December 31, 1967, with the District Director of Internal Revenue, Hartford, Connecticut. Copies of petitioner's 1966 and 1967 returns are attached hereto as Exhibits 1-A and 2-B, respectively.

3. Petitioner filed a Form 1040 for each of the taxable years ended December 31, 1968, December 31, 1969, December 31, 1970, and December 31, 1971, with the District Director of Internal Revenue, Hartford, Connecticut. Copies of the Form 1040's filed for 1968, 1969, 1970, and 1971, are attached hereto as Exhibits 3-C, 4-D, 5-E, and 6-F, respectively.

4. The 1040 Forms filed by petitioner for each of the taxable years 1968 through 1971, inclusive, set forth petitioner's name and address in the top space, as provided,

and bears her signature in the appropriate space at the bottom of the Form. None of the four 1040 Forms filed for the tax years 1968 through 1971, inclusive, reflect any items of income, expense, deduction, or other information bearing on petitioner's taxable income..

5. Petitioner was unmarried during the entire taxable years 1966, 1967, 1968, 1969, 1970, and 1971 and was unmarried during the entire two years immediately preceding the taxable year 1966.

6. The tax on petitioner's returns for the years 1966 and 1967, as filed, was computed by petitioner on the basis of the rates set forth in Int. Rev. Code of 1954 § 1(a)(2), as amended and applicable for the years 1966 and 1967.

7. Petitioner filed a Form 843 Claim for Refund for the taxable years 1966 and 1967 with the District Director of Internal Revenue, Hartford, Connecticut, on August 27, 1969.



[ - 4 - ]

8. Respondent, by letters of the District Director of Internal Revenue, Hartford, Connecticut, dated on or about October 29, 1969, refused to allow the claims referred to in paragraph 7 above for the reason that the claims were based solely on alleged unconstitutionality of the Revenue Acts and that only the courts have authority to pass on such matters. True and correct copies of said letters are attached as Exhibits B and C to the petition filed in Docket No. 3789-71 and are incorporated herein by reference.

9. Petitioner was previously before this Court in the case of Vivien Kellems, 58 T.C. 556 (1972), aff'd per curiam 474 F.2d 1399, 31 A.F.T.R.2d 73-1085 (2nd Cir. 1973), cert. denied \_\_\_ U.S. \_\_\_ (October 9, 1973).

10. Petitioner's previous case referred to in paragraph 9 above involved the 1965 taxable year and petitioner asserted therein that the computation of her income tax through the use of rates applicable to single persons rather than married persons violated her constitutional rights and penalized her in the amount of \$2,939.13 for the 1965 taxable year because she was single.

[ - 5 - ]

11. On February 9, 1970, petitioner executed Form 872, Consent Fixing Period of Limitation Upon Assessment of Income and Profits Tax, extending the time for assessment for the taxable year 1966 to December 31, 1970. By Form 872 executed by petitioner on July 14, 1970, the time for assessment for the taxable year 1966 was extended to June 30, 1971. Copies of these Consents are attached hereto as Exhibit 7-G.

12. On March 11, 1971, respondent mailed to petitioner a statutory notice of deficiency for the taxable years ended December 31, 1966, and December 31, 1967, together with a statement attached thereto.

13. On September 13, 1972, respondent mailed to petitioner a statutory notice of deficiency for the taxable years ended December 31, 1968, and December 31, 1969, together with statement attached thereto.

14. On May 16, 1973, respondent mailed to petitioner a statutory notice of deficiency for the taxable years ended December 31, 1970, and December 31, 1971, together with statement attached thereto.

15. The statutory notices of deficiency (with statements attached thereto) referred to in paragraphs 12, 13 and 14 above are attached to the petitions in Docket Nos. 3789-71, 8862-72 and 6033-73, respectively.



[ 6 ]

16. The statements set forth in the petitions in all three dockets attributed to Randolph E. Paul, Assistant Secretary of the Treasury for Tax Policy Edwin S. Cohen, Senator Euguen McCarthy, Messrs. Sabath, Eberharter, McCormack and Combs, Senator O'Mahoney, President Truman and Senator Douglas were accurately transcribed from authentic public documents.

17. During the calendar year 1968, petitioner made estimated tax payments in the amount of \$13,875.00.

18. Petitioner has made no estimated tax payments since 1968.

MEADE WHITAKER  
Chief Counsel  
Internal Revenue Service

(signed, Donald W. Geerhart) SW

/s/ Vivien Kellems  
VIVIEN KELLEMS  
Petitioner

By: DONALD W. GEERHART  
Chief, Trial Branch  
Tax Court Litigation Division  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224  
Tel. No. 202-964-3335

APR 11 1974

                      
Date

UNITED STATES TAX COURT

VIVIEN KELLEMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket Nos. 3789-71,
	)	8862-72 and 6033-73
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	[Filed July 25, 1974]

FIRST SUPPLEMENTAL STIPULATION OF FACTS

It is further stipulated that, for purposes of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this Stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts or exhibits in evidence on grounds of materiality and relevancy; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated, and either party may specifically reserve any other objection by noting the same in the body of this stipulation.

19. The entire record, including the appeal proceedings, in the case of Vivien Kellems, 58 T.C. 556 (1972), aff'd.



[ 2 ]

per curiam 474 F.2d 1399, 31 A.F.T.R. 2d 73-1085 2d Cir.  
1973), cert. denied \_\_\_\_\_ U.S. \_\_\_\_\_ (October 9, 1973),  
is incorporated herein by reference.

MEADE WHITAKER  
Chief Counsel  
Internal Revenue Service

Vivien Kellem  
VIVIEN KELLEMS  
Petitioner

April 11, 1974  
Date

(signed) Donald W. Geerhart  
STB  
By: DONALD W. GEERHART  
Chief, Trial Branch  
Tax Court Litigation Division  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224  
Tel. No. 202-964-3335

APR 15 1974

UNITED STATES TAX COURT  
WASHINGTON

VIVIEN KELLENS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 3789-71, 8862-72,  
6033-73.

[Filed August 5, 1974]

MEMORANDUM SUR ORDER

These cases were called for trial on July 25, 1974, before a Special Session of this Court. Before proceeding with the trial, petitioner made an oral motion requesting a jury trial. The Seventh Amendment provides that in suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. The common law referred to is the common law of England as of 1791. Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654 (1935). A suit against the Government such as in the instant proceeding is not a suit at common law within its true meaning. McElrath v. United States, 102 U.S. 426, 440 (1880). Under the common law in 1791 a jury trial was not a matter of right for persons asserting claims against the sovereign. Galloway v. United States, 319 U.S. 372, 388 (1943). The instant suit is not an action of common law debt, as contended by petitioner. Olshausen v. Commissioner, 273 F. 2d 23 (C.A. 9, 1960), affirming a Memorandum Opinion of this Court. As a constitutional requirement, there is no right to a jury trial in tax matters. Wickwire v. Reinecke, 275 U.S. 101 (1927); Phillips v. Commissioner, 283 U.S. 589, 599 fn. 9 (1931); Emma R. Dorl, 57 T.C. 720 (1972).

Petitioner contends that there now exists a right to a jury trial in the United States Tax Court because of its change in status pursuant to the Tax Reform Act of 1969 from an independent agency of the Executive Branch of the Government to an Article I Court. The Tax Court is now a legislative Court, the constitutional basis of which is found in Article I, section 8, clause 1 of the Constitution. This change in status, however, in nowise limits the power of Congress to require that all trials before the Court shall be without a jury, as is provided in section 7451, Internal Revenue Code of 1954. The Supreme Court



[ 2 ]

has previously held that Congress may dispense with a jury trial in suits brought in the Court of Claims, which at that time was also a legislative court deriving its power from Article I. United States v. Sherwood, 312 U.S. 584 (1941).

Accordingly, after due consideration, it is

ORDERED: That petitioner's oral motion requesting a jury trial is denied.

Dated: Washington, D. C.  
August 5, 1974.

*Daniel D. Wilis*

Judge

UNITED STATES TAX COURT  
WASHINGTON

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 3789-71

[Filed August 7, 1974]

ORDER OF DISMISSAL AND DECISION

This case was originally calendared for trial at the Trial Session beginning June 3, 1974, at Washington, D. C. Because of petitioner's illness, petitioner was unable to try her case at the originally scheduled time and requested a postponement of the trial of her case to some later date during the same trial session. The Court was unable to reschedule the case and therefore restored it to the general docket for trial in due course. Thereafter, the parties jointly moved that the Court calendar the case for trial at a special trial session of the Court anytime during the period of July 8, 1974 through and including July 26, 1974. Accordingly, the Chief Judge calendared this case for trial at a special session beginning at 10:00 a.m., July 25, 1974, at Washington, D. C.

On July 25, 1974, the case was called for trial on the merits before a special session of this Court. At that time, however, petitioner made a demand for a trial by jury and indicated that she was not prepared to proceed with the trial of her case on the merits. Petitioner had not previously notified either the respondent or this Court that she was ill and did not intend to proceed with the trial of her case or that she intended to request a jury trial.

Having heard the petitioner's motion for a jury trial and having recessed temporarily to consider the merits of petitioner's motion, the Court reconvened and denied said motion. Whereupon the Court requested that petitioner proceed with the trial of her case. Petitioner replied that she was not ready to proceed. The facts in this case having been stipulated to a great extent and the parties themselves having stated that trial of this case would require no more than a half a day, the Court inquired whether petitioner would be prepared to try her case during the afternoon of July 25, 1974, to which question the petitioner again answered in the negative.



[ 2 ]

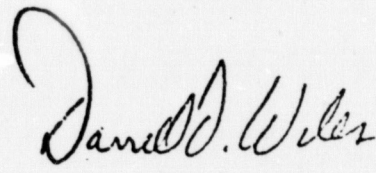
Thereupon respondent made a motion to dismiss the case for failure to prosecute. Based upon the evidence indicated in the record and considering that the petition in this case had been filed for a substantial period of time, that a continuance in this case had previously been granted, that petitioner herself requested that this Court hold a special trial session to hear her case, and that petitioner having so requested then failed to notify this Court or the respondent that she did not intend to try her case on that date, it is

ORDERED: That respondent's oral motion is granted and that this case is dismissed for failure to properly prosecute.

It is further,

ORDERED and DECIDED: That there are deficiencies in income tax due from the petitioner for the years 1966 and 1967 in the respective amounts of \$5,782.11 and \$6,507.95.

Entered: AUG 7 1974

  
Judge.

UNITED STATES TAX COURT  
WASHINGTON

VIVIEN KELLEMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 8862-72.

[Filed August 7, 1974]

ORDER OF DISMISSAL AND DECISION

This case was originally calendared for trial at the Trial Session beginning June 3, 1974, at Washington, D. C. Because of petitioner's illness, petitioner was unable to try her case at the originally scheduled time and requested a postponement of the trial of her case to some later date during the same trial session. The Court was unable to reschedule the case and therefore restored it to the general docket for trial in due course. Thereafter, the parties jointly moved that the Court calendar the case for trial at a special trial session of the Court anytime during the period of July 8, 1974 through and including July 26, 1974. Accordingly, the Chief Judge calendared this case for trial at a special session beginning at 10:00 a.m., July 25, 1974, at Washington, D. C.

On July 25, 1974, the case was called for trial on the merits before a special session of this Court. At that time, however, petitioner made a demand for a trial by jury and indicated that she was not prepared to proceed with the trial of her case on the merits. Petitioner had not previously notified either the respondent or this Court that she was ill and did not intend to proceed with the trial of her case or that she intended to request a jury trial.

Having heard the petitioner's motion for a jury trial and having recessed temporarily to consider the merits of petitioner's motion, the Court reconvened and denied said motion. Whereupon the Court requested that petitioner proceed with the trial of her case. Petitioner replied that she was not ready to proceed. The facts in this case having been stipulated to a great extent and the parties themselves having stated that trial of this case would require no more than a half a day, the Court inquired whether petitioner would be prepared to try her case during the afternoon of July 25, 1974, to which question the petitioner again answered in the negative.



[ - 2 - ]

Thereupon respondent made a motion to dismiss the case for failure to prosecute. Based upon the evidence indicated in the record and considering that the petition in this case had been filed for a substantial period of time, that a continuance in this case had previously been granted, that petitioner herself requested that this Court hold a special trial session to hear her case, and that petitioner having so requested then failed to notify this Court or the respondent that she did not intend to try her case on that date, it is .

ORDERED: That respondent's oral motion is granted and that this case is dismissed for failure to properly prosecute.

It is further,

ORDERED and DECIDED: That there are deficiencies in income tax and additions thereto due from the petitioner as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to tax under the</u> <u>Internal Revenue Code of 1954</u>		
		<u>Section 6651(a)</u>	<u>Section 6653(a)</u>	<u>Section 6654</u>
1968	\$21,391.73	\$1,879.18	\$1,069.59	\$129.53
1969	21,255.05	5,313.76	1,062.75	680.17

Entered: AUG 7 1964

*Daniel D. Miller*  
Judge

UNITED STATES TAX COURT  
WASHINGTON

VIVIEN KELLENS

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 6033-73.

[Filed August 7, 1974]

ORDER OF DISMISSAL AND DECISION

This case was originally calendared for trial at the Trial Session beginning June 3, 1974, at Washington, D. C. Because of petitioner's illness, petitioner was unable to try her case at the originally scheduled time and requested a postponement of the trial of her case to some later date during the same trial session. The Court was unable to reschedule the case and therefore restored it to the general docket for trial in due course. Thereafter, the parties jointly moved that the Court calendar the case for trial at a special trial session of the Court anytime during the period of July 8, 1974 through and including July 26, 1974. Accordingly, the Chief Judge calendared this case for trial at a special session beginning at 10:00 a.m., July 25, 1974, at Washington, D. C.

On July 25, 1974, the case was called for trial on the merits before a special session of this Court. At that time, however, petitioner made a demand for a trial by jury and indicated that she was not prepared to proceed with the trial of her case on the merits. Petitioner had not previously notified either the respondent or this Court that she was ill and did not intend to proceed with the trial of her case or that she intended to request a jury trial.

Having heard the petitioner's motion for a jury trial and having recessed temporarily to consider the merits of petitioner's motion, the Court reconvened and denied said motion. Whereupon the Court requested that petitioner proceed with the trial of her case. Petitioner replied that she was not ready to proceed. The facts in this case having been stipulated to a great extent and the parties themselves having stated that trial of this case would require no more than a half a day, the Court inquired whether petitioner would be prepared to try her case during the afternoon of July 25, 1974, to which question the petitioner again answered in the negative.



[ 2 ]

Thereupon respondent made a motion to dismiss the case for failure to prosecute. Based upon the evidence indicated in the record and considering that the petition in this case had been filed for a substantial period of time, that a continuance in this case had previously been granted, that petitioner herself requested that this Court hold a special trial session to hear her case, and that petitioner having so requested then failed to notify this Court or the respondent that she did not intend to try her case on that date, it is

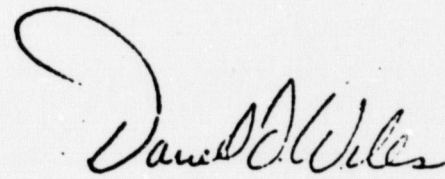
ORDERED: That respondent's oral motion is granted and that this case is dismissed for failure to properly prosecute.

It is further,

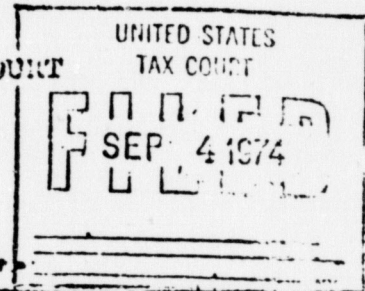
ORDERED and DECIDED: That there are deficiencies in income tax and additions thereto due from the petitioner as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to tax under the</u> <u>Internal Revenue Code of 1954</u>		
		<u>Section 6651(a)</u>	<u>Section 6653(a)</u>	<u>Section 6654</u>
1970	\$15,827.23	\$3,956.81	\$791.36	\$506.47
1971	15,493.69	3,873.42	774.68	495.70

Entered: AUG 7 1974

  
Judge

UNITED STATES TAX COURT



VIVIAN KELLENS,

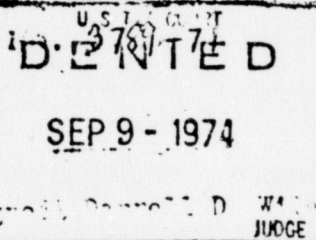
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket #



MOTION TO (1) VACATE DECISION, (2) RECONSIDER  
ORDER OF DISMISSAL, AND (3) GRANT HEARING ON  
MERITS

Comes now Vivian Kellens, pro se, and respectfully requests as follows:

(1) That the decision entered in the above-entitled proceeding under date of August 7, 1974, determining deficiencies for the years 1966 and 1967 in the respective amounts of \$5,782.11 and \$6,507.95 be vacated.

(2) That order of dismissal without hearing on the merits entered on August 7, 1974 be reconsidered and reversed, and

(3) That petitioner be granted a hearing on the merits with or without a jury trial, as the Court deems proper, at any time on or after Monday, October 14, 1974.

The grounds for this request are that petitioner has been gravely ill and was able to appear at the hearing of July 25, 1974 at Washington, D.C. only by having a blood transfusion earlier that week. Because of such illness petitioner had not been able to



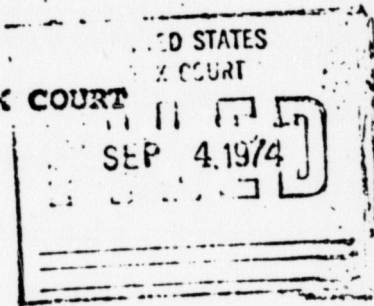
subpoena witnesses and assemble the proof necessary for the proper presentation of this case. Petitioner is now undergoing intensive treatment and it is believed that by October 14, 1974 she will be able to prepare and present this case to the Tax Court at a hearing on the merits.

Petitioner recognizes that her request for a jury trial pursuant to the Constitution of the United States in the light of the Supreme Court's decision of April 24, 1974 in Pernell v. Southall Realty, 40 L.Ed.2d 198, has been denied and she is not renewing that request at this time. However, in order that a serious miscarriage of justice in this case may be avoided, petitioner earnestly asks that she be granted a hearing on the merits before this Court on or after October 14, 1974, just as though the Supreme Court had not spoken in Pernell v. Southall Realty, supra.

Vivian Kellems

Vivian Kellems  
Newberry Road  
East Haddam, Connecticut 06423

UNITED STATES TAX COURT



VIVIEN KELLEMS,

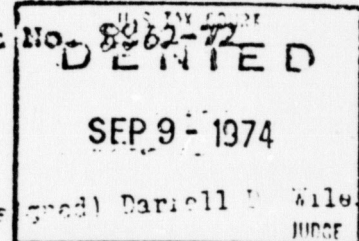
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.



MOTION TO (1) VACATE DECISION, (2) RECONSIDER  
ORDER OF DISMISSAL, AND (3) GRANT HEARING ON  
MERITS

Comes now Vivien Kellems, pro se, and respectfully requests as follows:

(1) That the decision entered in the above-entitled proceeding under date of August 7, 1974, determining deficiencies and penalties for the years 1968 and 1969 in the respective amounts of \$24,470.03 and \$28,311.73 be vacated.

(2) That order of dismissal without hearing on the merits entered on August 7, 1974 be reconsidered and reversed, and

(3) That petitioner be granted a hearing on the merits with or without a jury trial, as the Court deems proper, at any time on or after Monday, October 14, 1974.

The grounds for this request are that petitioner has been gravely ill and was able to appear at the hearing of July 25, 1974 at Washington, D.C. only by having a blood transfusion earlier that week. Because of such illness petitioner had not been able to



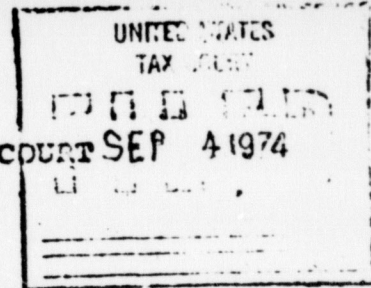
subpoena witnesses and assemble the proof necessary for the proper presentation of this case. Petitioner is now undergoing intensive treatment and it is believed that by October 14, 1974 she will be able to prepare and present this case to the Tax Court at a hearing on the merits.

Petitioner recognizes that her request for a jury trial pursuant to the Constitution of the United States in the light of the Supreme Court's decision of April 24, 1974 in Parnell v. Southall Realty, 40 L.Ed.2d 198, has been denied and she is not renewing that request at this time. However, in order that a serious miscarriage of justice in this case may be avoided, petitioner earnestly asks that she be granted a hearing on the merits before this Court on or after October 14, 1974, just as though the Supreme Court had not spoken in Parnell v. Southall Realty, supra.

Vivian Kellem

Vivian Kellem  
Newberry Road  
East Haddam, Connecticut 06423

UNITED STATES TAX COURT



VIVIEN KELLEMS,

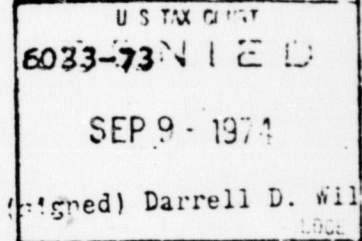
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.



MOTION TO (1) VACATE DECISION, (2) RECONSIDER  
ORDER OF DISMISSAL, AND (3) GRANT HEARING ON  
MERITS

Comes now Vivien Kellems, pro se, and respectfully requests as follows:

- (1) That the decision entered in the above-entitled proceeding under date of August 7, 1974, determining deficiencies and penalties for the years 1970 and 1971 in the respective amounts of \$21,081.87 and \$20,637.49 be vacated,
- (2) That order of dismissal without hearing on the merits entered on August 7, 1974 be reconsidered and reversed, and
- (3) That petitioner be granted a hearing on the merits with or without a jury trial, as the Court deems proper, at any time on or after Monday, October 14, 1974.

The grounds for this request are that petitioner has been gravely ill and was able to appear at the hearing of July 25, 1974 at Washington, D.C. only by having a blood transfusion earlier that week. Because of such illness petitioner had not been able to



subpoena witnesses and assemble the proof necessary for the proper presentation of this case. Petitioner is now undergoing intensive treatment and it is believed that by October 14, 1974 she will be able to prepare and present this case to the Tax Court at a hearing on the merits.

Petitioner recognizes that her request for a jury trial pursuant to the Constitution of the United States in the light of the Supreme Court's decision of April 24, 1974 in Pernell v. Southall Realty, 40 L.Ed.2d 193, has been denied and she is not renewing that request at this time. However, in order that a serious miscarriage of justice in this case may be avoided, petitioner earnestly asks that she be granted a hearing on the merits before this Court on or before October 14, 1974, just as though the Supreme Court had not spoken in Pernell v. Southall Realty, supra.

Vivien Kellems

Vivien Kellems  
Newberry Road  
East Haddam, Connecticut 06423

UNITED STATES TAX COURT

VIVIAN KELLEMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Dkt. Nos. 8862-72
	)	3789-71
COMMISSIONER OF INTERNAL REVENUE,	)	6033-73
	)	
Respondent.	)	[Filed September 11, 1974]

JOINT MOTION TO CORRECT TRANSCRIPT

THE PARTIES move to correct the transcript of the July 25, 1974, proceedings before this Court in the above-captioned cases as follows:

Generally: Conform all references to "Mrs. Kellems" or "Miss Kellem" to "Miss Kellems".

Page 2, line 17: Substitute "Haddam" for "Hampton".

Page 3, line 2: Substitute "Petitioner show cause why" for "Petitioner show cause by".

Page 3, line 14: Substitute "And attached to" for "And the tax of".

Page 3, line 20: Substitute "20-38, inclusive" for "20-38, exclusive".

Page 7, line 5: Substitute "Amendments" for "Amendment".

Page 9, line 5: Insert "hundred" after "sixteen".

Page 15, line 25: Delete line 25 and substitute therefor "rule and safeguards governing such".

[Granted September 16, 1974]



Page 18, line 23: Substitute "Nor" for "Or".

Page 19, line 7: Delete "people -- a".

Page 20, line 13: Delete "that --".

Page 20, line 17: Substitute "forums" for "forms".

Page 20, line 18: Substitute "forum" for "form".

Page 21, line 8: Substitute "Mitchell Rogovin wrote, and I quote," for "Mitchell wrote, and I state,".

Page 21, line 24: Insert quotation marks before "Petitioner".

Page 22, Lines 3, 5 and 9: Insert quotation marks before the start of lines 3, 5, and 9.

Page 22, line 10: Insert quotation marks after "tenable".

Page 22, line 13: Add "a" at end of line 22.

Page 23, line 2: Substitute "longstanding" for "Long stand".

Page 23, lines 19 and 21: Substitute "Pernell" for "Pennell".

Page 24, lines 6 and 16: Add quotation marks before the start of lines 6 and 16.

Page 24, line 18: Insert quotation marks after "1791".

Page 24, line 20: Insert quotation marks before "it".

Page 25, line 15: Add quotation marks before start of line 15.

Page 25, line 20: Add "to" between "perserve" and "the" and, add quotation marks after "trial".

Page 26, line 21: Substitute "unconstitutional," for "un-Constitutional".

Page 27, line 12: Substitute "Marianne Means" for "Mary Ann Wings".

Page 29, line 8: Substitute "argument" for "are you".

Page 29, line 20: Substitute ", and --" for ", and" and insert "--" after "Court" on that line.

Page 29, line 24: Substitute "Burns, Stix" for "Burnsticks".

Page 30, line 14: Substitute "it" for "that".

Page 30, line 15: Substitute "here" for "held".

Page 30, line 17: Substitute "lists" for "is".

Page 33, line 11: Substitute "may" for "did".

Page 36, line 10: Substitute "mentioned a bit ago?" for "mixed quite a bit?".

Page 36, line 17-18: Substitute "Marianne Means" for "Mary Ann Mead's".

Page 42, line 14: Substitute "on the" for "and".

Page 42, line 17: Substitute "did -- ah --" for "didn't".

Page 42, line 18: Substitute "only" for "on".

Page 42, line 25: Substitute "certiorari" for "so surely".



Page 44, line 21: Substitute "12th hour motion -- an argument --" for "12th hour, or a motion, an argument".

Page 44, line 24: Substitute "Appeal" for "the Bill".

Page 45, line 17: Substitute "in" for "and".

Page 46, line 20: Substitute "for purposes of" for "for persons in".

Page 47, line 18: Substitute "question" for "questions".

Page 48, line 18: Substitute "have" for "had".

Page 50, line 1: Substitute "in" for "within".

WHEREFORE, it is prayed that this motion be granted and that the transcript of the July 25, 1974, proceedings in the above-captioned cases be conformed accordingly.

/s/ Vivien Kellems  
VIVIEN KELLEMS  
Petitioner

MEADE WHITAKER  
Chief Counsel  
Internal Revenue Service

By: (Signed) Edward E. Pigg  
EDWARD E. PIGG  
Acting Chief, Trial Branch  
Tax Court Litigation Division  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224  
202-964-4329

SEP. 10, 1974

CERTIFICATE OF SERVICE

It is hereby certified that service of this appendix has been made on appellant, appearing pro se, by mailing four copies thereof on this 20<sup>th</sup> day of February, 1975, in an envelope, with postage prepaid, properly addressed to it as follows:

Estate of Vivien Kellems  
Newberry Road  
East Haddam, Connecticut 06423

*Gilbert E. Andrews/eah*  
GILBERT E. ANDREWS,  
Attorney.